

To the most honored
S^r ROBERT COTTON

of Connington.

Knight and Baronet.

Noble Sir;

IVsue, no lesse then Obedience, urges
me to inscribe this Historie of Tithes to
your name. So great a part of it, was lent
me by your most readie Courtesie and able
Direction, that I restore it rather then giue it
you. And it cannot but receiue an increase of
estimation from your interest thus seen in it.
For to haue borrowed your help, or vsd that
your inestimable Library (which liues in you)
assures a curious Diligence in search after
the inmost, least known and most vsfull parts
of Historicall Truth both of Past and Pre-
sent Ages. For such is that Truth which your
Humanitie liberally dispenses; and such is
that which by conference is learned from you.
such indeed, as if it were, by your example,
more sought after; so much head-long Er-
ror, so many ridiculous impostures would
not be thrust on the too credulous, by those
which stumble on in the Road, but neuer with
any care looks on each side or behind them.

that is, those which keep their Understandings
alwaies in a weak Minoritie that ever
wants the Auctoritie and Admonition of a Tu-
tor. For, as on the one side, it cannot be doub-
ted but that the too studious Affectation of
bare and sterile Antiquitie, which is nothing
els but to be exceeding busie about nothing,
may soon descend to a Dotage; so on the o-
ther, the Neglect or only vulgar regard of the
fruitfull and precious part of it, which gives
necessarie light to the Present in matter of
State, Law, Historie, and the vnderstanding
of good Auctors, is but preferring that kind
of Ignorant Infancie, which our short life
alone allows vs, before the many ages of for-
mer Experience and Obseruation, which may
so accumulat yeers to vs as if we had liud euen
from the beginning of Time. But you best
know this; in whom that usefull part is so
fully eminent, that the most learned through
Europe willingly acknowledge it. and so o-
pen bath your courtesie euer made the plen-
tious store of it to me, that I could not but thus
offer you whatsoever it in This of mine own
also, as a symbole of some thankfulness. It
was at first destined to you. And howeuer
through the baslie fortune that (I know not
why) it suffered at the Presse, some pieces of
it haue been dispersed without the Honor that
your

your Name might add to them; I shall be yet ever
so ambitious of that Honor, that the whole shall ne-
ver (for so much as I can prevent) be communicated
without this prefix testimonie of Dutie to you. Re-
ceive it favourably, Noble Sir; and continue to me
that Happinesse which I enjoy in that you neither re-
pute me unworthy of your Love, nor permit me in
Ignorance when I come to learne of you.

From the Inner Temple,

April. VI. 1611. C. D. XVIII

THE PREFACE.

IT hath euen so happend with not a few of the Malicious (what through lazie Ignorance, what through peeuish Ielousie) at their first sight or hearing of the name of this *Historie of Titbes*, as it was wont with those raw Nouices, that, vpon their first admission to the sacred Mysteries of the Gentiles, troubled and frightened themselves with a world * of false apparitions while they thought of what they should see in the inmost Sanctuarie at the ynknown presence of their Deitie. And doubtlesse, the Priest had not a litle work to perswade them that what they should there meet with, was not an vsflockie *Empusa*, not a formidable *Mormo*, not a wanton *Cobalus*, not a mischieuous *Furie*, not indeed any thing that their idle brains, being such meer strangers to the abstrusest parts of Truth, had fashioned out. The many fancies that Malice, Ignorance, and Iealousie haue framd to themselves touching this of Mine, haue been no lesse ridiculous, and some equally fearefull, but equally false. And I must here first play the Priest also, and so cleer, if it were possible, those Fancies, by protesting that it is not writen to *proue that Titbes are not due by the Law of God*; not writen to *proue that the Laitie may detaine them*, not to *proue that Lay bands may still enioy Appropriations*; in summe, not at all against the maintenance of the Clergie. Neither is it any thing else but it self, that is, a meer Narration, and the *Histo-*

* *Proclm in Plat-*
ide, Theolog. lib. 1.
cap. 1 & lib. 4.
cap. 11.

rie of *Tubes*. Nor is the law of God, whence Tithes
are commonly deriud, more disputed of in it, then
the Divine Law, whence all Creatures have their
continuing subsistence; is inquired after in *Ari-
stotles* historie of living Creatures, in *Plinies* Na-
turall historie, or in *Theophrastus* his historie of
Plants; or then the Iustice of the old Courts of
Rome, is examin'd in *Bradaus* his historie of them,
or the conuenience of the Ciuill and Canon Laws
in that of *Riuallius*. Nor was any thing, that be-
longed to the Title, purposely omitted. Nor was
any piece of it stolne from any other mans notes.
That as the rest also hath been most maliciously
imputed by some that so impudently dare conie-
cture (though they be farre enough from being ei-
ther—*ars aut scientia Diuini*) and as iudiciously
censure it or me, as those in *Lucian*, could *Euripi-
des*, that were weekly stark mad in Rime till Win-
ter, by reason of what they had heard of his Tra-
gedies in Summer, and could neither iudge at all
of what they said nor yet possibly hold their peace.
But they know there are neuer wanting long eares
readie stretcht out to base detraction, and that a-
nimates them. I know not how otherwise to con-
firm these protestations then by sending him, that
beleues me not here, to the view of the whole. He
may be there further satisfied. and shall then see al-
so that it is not of the Pitch of the Doctrine of the
Brewerie, or within the compasse of Pocket-learn-
ing. Nor will it, I think, looke like what were
peacht up out of *Pestils*, *Polymaths*, common
place

pose of writing it; by the *Argument* of it; by the *Course* of composing it; and by the *Summe* of performance in it in behalfe of the *Clergie*.

For the first; we find that in the frequent Disputations about Tithes, not only Arguments out of holy Writ for prooofe of a *Divine* right to them, but matter also of *Fact*, that is, *Practice* and *Storie*, is very often vsed; as the *kinds of paymens* of them among the *Ebrews*, among the *Gentiles*, the *Maintenance of the Church* in the *Primitive* times, the *Arbitrarie Consecrations*, *Appropriations* and *Infeodations* of them in the *middle times*, the *Payment of them at this day* in the severall States of *Christendom*, together with the *various Opinions* and *positive Laws* touching them. For, *Opinions* and *Laws*, as they are related only and fall vnder the *Question* of what and whence they were, are meerly of *Fact*. And proofs are hence often drawn to confirm sundrie occurrences in inquitie for the truth on either side. That of the *Divine* right of them is so wholly a point of *Diuinitie* and handled so fully by diuers *Schoolemen*, so impetiously by most of the *Canonists*, and so confidently by some of our *late Divines*, that what euer could be said touching that only, by inference out of the holy *Text* (which must be the sole triall of it) would but seem taken from some of them which haue so purposely disputed it. Neither were that so fit to be medled with by any as by a profest *Divine*. But for that other part which falls vnder *Historie*, there is not one of them all which hauing boldnes enough

c. Allen. 700-
110. 1. sup. lib. 13.
cap. 32.

to adventure on it (which he disputes withall of the *diuine right*) shews not also too much either Ignorance or Negligence in talking of it, being v-
sually deceiud and deceiuing in it those most of Readers that giue their Historicall faith captiue to bare Names and common reputation. And as in that old picture of *Homer* the rest of the following Poets greedily swallowd what euer he had vomited forth, so among these, one so rashly receiues herein error from another, and so increases it, that there was neuer found a better example of the old prouerb *Sardi Venales*, or worse and worse, then in most of their multiplied pamphlets of it. which of them relates towards what is fit to be known touching the paiment among the *Ebrews*? among the *Gentiles*? among *Christians* of former time? nay, which of them seem to know or to haue heard of the chief *human positive Laws* made for Tithes? yet would they gladly vse them if they had them. where is there among them an ingenuous discouerie of the *various Opinions* of past Ages that belong hither? who of them once touches the right ancient course of setting Tithes at first in Monasteries, Colledges, or other such Corporations, by *Appropriations* and *Consecrations* of them? who of them tells vs other then meer fables, while hee talks of the originall of *Infeodations*? and with what patience can you read those which as great Doctors talke of *Exemptions*, and pretend themselves to the world for such as discover the most secret curiosities, or *cornicum oculor configere*, tell

V
 vs of four Orders exempted, and make the *Hospita-*
lers and those of *S. Johns of Ierusalem* to be two
 of them, with other such most grosse and ridicu-
 lous absurdities? and it is a common, but most de-
 ceiuing argument among them, affirmatiuely to
 conclude *Fact* or *Practice* of Tithing from what
 they see ordaind for Tithes in any old *Canon* of the
 Church. as if euery thing so ordaind, necessarily
 had also a following vse. it being indeed frequent
 enough to find *Canons* directly contrarie to fol-
 lowing *Practice*; and that even in the proceedings
 of the *Canon Law*, which (as the body of it is)
 was neuer receiued wholly into practice in any
 State, but hath beene ever made subiect in whatso-
 ever touches the temporalties or maintenance of
 the Church (which come from Lay men) to the va-
 rietie of the secular Laws of euery State, or to Na-
 tionall customes that crosse it. Is it enough to
 proue that Parish Churches, in *England*, were re-
 gularly euer to be repaired by the Parsons, because
 the generall ^d *Canon Law* is so? or that a Clergie
 man might not haue bequeathd any chattels wher-
 in he had right in respect of his Church, because
 also by that ^e *Law* he might not? In *England*, ge-
 nerall customs of the contrarie in both cases still
^f held, and in many other as you see in *Lindwood*,
 who knew both the generall practice here and the
Canons, and often also teaches their differences in
 other cases. very many like may be found in other
 States, by comparing their immemoriall customs
 and old ordinances that are against the *Canons*,

d *Cap. de de E-*
clis. cap. 1. q. 1.
de her.

e *Extra de offi-*
ciali Ordinali
c. 4. cum not.

f *Lindwood. c.*
Nellus, tit. de ex-
heredat. & tit.
de offi. Archi-
diac. c. de elich-
con. verb. i. quon-
dam. Et de Tith-
mentis. c. ut Clau-
culus. verb. i. quon-

g. Videtur utroque
in Can. Const. Chal.
sed. 12. & 6. in
Trullo 38. & 55.
et Balsamon in Chal.
can. 15. & 28.
preter id quod de
Adagio & Gaba.
de Episcopatum
Baptismum penen-
tibus, subiungit
tur Concilio Car-
thaginensi.
h. Iulianus Can.
num. 11. 3.

and that both in the Eastern and Western Churches and for the Eastern Canon Law; passages are found to this purpose in *Zonaras* and *Balsamon*, the two chief and ancient Canonists of that part. The Laitie at pleasure commonly limited the Canon Law especially where it toucht their dignities or possessions (and that aswell before *Luther* so derogated from the autoritie of it by burning it at *Wuteberg* in a publique assembly, in despite of the Pope, as after) which might be manifested by a world of examples. but it is most cleer to all that know Historie. To argue therefore from affirmative Canons only to Practice, is equall in not a few things (and especially in this of Tithing) to the proving of the Practice of a custom from some consonant Law of *Plato's* common wealth, of *Lucians* men in the Moon, or of *Aristophanes* his Citie of Cuckoes in the clouds. To supply therefore the want of a full and faithfull collection of the *Historicall* part, was the end and purpose why this was composd which might remaine as a furnishe Armonie for such as inquire about this Ecclesiastique Revenne, and preferring Truth before what dulling custom hath too deeply rooted in them, are not vnwilling to change their old akorns for better meat.

As touching the Argument of it; the whole being XIV. Chapters, the first VII. are thus filled, the first hath what is, in best autoritie of the ancients, belonging to those Tithes paid before the *Leuiticall* Law. the second the severall kinds paid by

by the *Jews* vnder the Law: and this from *Ebreu* Lawiers. The third shews the Practice of the *Romans*, *Grecians*, and some other *Gentiles*, in paying or vowing them. Then the whole time of *Christianitie* being quadripartitly deuided (with allowance of about XX. years more or lesse to euery part) takes vp the next *Four* Chapters, in which the Practice of payment of *Tithes*, *Arbitrarie Consecrations*, *Appropriations*, *Infeodations* and *Exemptions* of them, establishment of *Parochial* right in them, as also the *Laws* both *Secular* and *Ecclesiastique*, with the *Opinions* of *Diuines* and *Canonicists* touching them, are in their severall times manifested; but so only, that whatsoever is proper to this Kingdom of *England* either in *Law* or *Practice*, either of *Payment* or of *Arbitrarie Consecrations*, *Appropriations*, or *Infeodations*, or establishment of *Parochial* right, together with a *Corollarie* of the *ancient Iurisdiction* whereto they haue been here subiect, is reserued all by it selfe to the next *Seven* Chapters. But euery of the *XIV* haue their Arguments prefixt, which may discharge me of further declaration in this place. By this time, I trust, you conceiue what the name of *Historie* in the Title pretends, and the *Tubes* spoken of purposely in it (for perhaps it is needfull to admonish that also) are only such as either haue been paid, vowd, or dedicated to holy vses, or els giue light to the consideration of the performance or omission of such payment. Neither the *Decima Saladina*, nor the *Decima Papales* (which were

wont to be imposed) nor the *Decima litium* in the Imperials, nor the old *ratio Decimarum* vpon the *Lex Pappia*, haue had place here, nor the like, which are no more to this subiect then the Tithes paid to the Crown by our Clergie, or by those of the Boroughs by grant in Parliament, or the *Terages* in Tenthis reserud by Lessors often in *France* and *Spain*, or the Tenthis anciently paid in some places, as Impost vpon Merchandise, or that old custom of *England*, in paying the *Aurum Regium*, that is a Tenth part of as much mony to her as was giuen at any time to the King, or other such. Nor had the Tithes of houses in *London*, place here otherwise then as they occurre in those Acts of Parliament and the Decree vnder *Henrie* the eight, that mentions the Ministers maintenance by the name of Tithes. For before that Decree, howeuer the LII. farthings paid on Sundaies only were neer the iust Tithe of euery X^l. Rent (that is about $\frac{1}{2}$.) and were perhaps thought on by that name (as may be collected out of *Lindwood*) yet these ioind with the other Offerings of great Festiual daies, made vp indeed only a certain competencie of maintenance, but could not properly be reputed among Tithes. neither in regard of their *Value*, nor (as compar'd with the ancient institution of Tithes among the Iews) in respect of their *Nature*. For their *value* came to much more then a Tithe, as also that doth which hath the name of Tithe at this day in *London*. neither is there reason enough why the LII. farthings that were offerd

I De ea re consulas si plura velis, *Isidorus de Dark. land. cap. 24.* Ita in Bibl. Cottoniana & Codicem illum *Gernasii Thiburini* sic dictum in *Sexto. cap. Arcidia.*
k Chaz. 1.5. 19.

on Sundaies should be feuerally; and as deuided from the other Offerings, thought on to this purpose. And for their *Nature* before these Acts and the Decree; I here offer only what I find in a short discourse, titled, *A Demise how the Curats of London may be provided of sufficient liuings*, written vnder *Henric* the eight, and remaining yet among the Records of the Exchequer. the Autor of it first shews that all Ministers of Gods word should giue freely their labours in the Church, and be maintained of the Tithe of the free gifts of the earth; as of Cattell, Corne and Fruit; which he supposes is as freely giuen them by the Almighty, through the labour of the people, as the preaching of the Word and administration of Sacraments is to the people through the labour of the Ministers. But he permits not that any mony or other profit, being not *liuing gifts*, as he calls them, is by the Law of God Titheable. so that where no such *liuing gifts* and increase are, there no Tithes (as Tithes) are paiaible to them, as he concludes. Nor indeed is any mention of other Tithes in the *Leuiticall* Law, then of the increase of the earth in Fruit and Cattell, that is of the gaine only out of those more naturall Trades (which *Aristotle* elegantly stiles *Πολιτικαί* *ἐκέραι τῆς γῆς*) of tilling the Earth and breeding of Cattell, and that which holy Writ calls *תבואה* *Theboab*, that is, *increase* or *reuenue*, where the Law of prediall Tithing is iterated, is vnderstood by the *Iewish* Doctors of the fruits and increase, giuen vs out of the soile; and

and is well Paraphrased by the Septuagint when they turne it *et multiplicata sunt*, that is, the increase of the earth. and in the vulgar it is expressed by fruges. But then, It is to se by what Law Curats of Churches in London can haue (so are the very syllables of that discourse) any liuing of the people otherwise but like as the people by their own consent will giue them for ther Office doing. In very dedde they must haue leuyngs to kepe them out of necessite. and thereby it is to se how in London they cannot receiue ther leuyngs of Godd by no liuely gifts of grace, like as in the Countrey. But in London they must receiue their leuyngs of mens gifts; that is money which is euery mans own, for their office doing. The Pope by his Law nor by his Bulls cannot compell no man to giffe his own gode to theym for their office doynge more then people will consent to giff theym. for Christ saith that their leuing is freely giuen them of Godd, if they do ther office to see all peple worke. Therefore that if the peple haue not labors and leuyngs, they ought to haue none nor can make no Law whereby to axe no mans goode. Therefore that leuing which they haue had in London hath been by the consents of the peple which hath long time giuen them *xiv^d*. of euery noble rated by the rents of houses which hath been riche leuyngs: wherewith they not content but ouer that hath procured of the peple money so many weys by casualties of Beryalls, Crystnings, Weddings, Obits, and Offerings, ybe and secretly risel yb mens consciences taking priuy Tithes of whatsoeuer they can get, be it out of euil gotten goodes. howsoeuer they

they can get it, they call it their deurtie. and thence
 he saies some Benefices were worth C^{li}. some
 LXXX^{li}. some C. marks, others L^{li}. and then he
 shortly aduises how the Ministers maintenance
 should be otherwise there limited and leuied. But
 who sees not enough now that what is called *Tubes*
of houses in London, is rather calld so only then is
 at all so? yet because the name of Tithes in those
 Acts of Parlament, is giuen to the Ministers main-
 tenance there, it had been perhaps reputed negli-
 gence to haue omitted the remembrance of them,
 in the *course* of composing it. The Testimonies
 were chosen by weight, not by number. taken on-
 ly thence whither the margin directs, neuer at se-
 cond hand. Neither affected I to muster vp many
 petie and late names for prooffe of what is had
 wholly by all from ancient Fountains. The Foun-
 tains only and what best cleered them, satisfied me,
 and I supposd euery iudicious Reader would be so
 best satisfied also. For in meer matter of elder
 storie, what credit can *Nauclerus*, *Cario*, *Cuspinian*,
 or the numerous rest of later time, adde to the te-
 stimonies of those Ancients yet extant, from whom
 they borrowed what euer they haue new drest of
 preceding ages? *Petrus Comestor*, or *Ludolphus de*
Saxonia may aswell increase the credit of holy
 Writ, as those other may the truth of such Histo-
 ries as instructed them in common with the rest of
 posteritie. Neither at all wish I that this of mine
 should gain any strength of Truth from my Name
 alone, but from those autorities which I haue de-

than

signed and brought, both for Elder, Late and Present times, out of such both Printed and Manuscript *Annals, Histories, Councils, Chartularies, Laws, Lawiers, & Records* only as were to be vsd in the most accurat way of search that might furnish for the subiect. yet also I haue not neglected the able iudgements of such of the learned of later time, as giue light to former ages. but I so preferd the choicest and most able, that I haue wholly abstaind from any mention or vse here of those many Ignorants that (while they write) rather instruct vs in their own wants of abilitie, then direct to any thing that may satisfie. If through ignorance I haue omitted any thing in the *Histories* or the *Review*, that deserued place in them; who euer shall admonish me of it shall haue a most willing acknowledgment of his learning and courtesie. But all the bad Titles that are euer due to abuse of the holiest obtestation, be alwaies my companions, if I haue purposely omitted any good autoritie of ancient or late time, that I saw necessarie, or could think might giue further or other light to any Position or part of it! For I sought only Truth, and was neuer so farre ingaged in this or aught els as to torture my brains or venture my credit to make or creat Premisses for a chosen Conclusion, that I rather would then could proue. My Premisses made what *Conclusions* or *Coniectures* I haue, and were not bred by them. And although Both of them here not a litle somtimes varie from what is vulgarly receiud; yet that happend not at all from

any desire to differ from common Opinion, but from another course of disquisition then is commonly vsed; that is, by Examination of the truth of those Suppositions which patient Idleness too easily takes for cleer & granted. For the old Sceptiques that neuer would professe that they had found a Truth, shewd yet the best way to search for any, when they doubted aswell of what those of the Dogmaticall sects too credulously receiud for infallible Principles, as they did of the newst Conclusions. they were indeed questionlesse too nice, and deceiud themselues with the nimblenesse of their own Sophismes that permitted no kind of established Truth. But plainly, he that auoids their disputing Leuitie, yet, being able, takes to himselfe their Libertie of Inquirie, is in the only way that in all kinds of studies leads and lies open euen to the Sanctuarie of Truth, while others, that are seruile to common Opinion and vulgar suppositions, can rarely hope to be admitted neerer then into the base court of her Temple which too speciously often counterfaits her inmost Sanctuarie. and to this purpose also is that of *Quintilian*, most worthy of memory, *Optim' est in discendo, paron' incredul'.*

* *Instit. Orator.*
lib. 1.2. cap. 2.

For the Summe of the *Performance in behalfe of the Clergie*; I dare confidently affirme, that neuer before was there towards so much *Humane Law positive* for the paiment of whole Tithes, obserued to publique view as is here discovered; and that especially in the VIII. chapter for the Clergie of *England*. And plainly he

that talks of Tithes without reference to such *positive Law*, makes the object of his discourse rather what he would have should be, then any thing that indeed is at all. For what State is in all Christendom wherein Tithes are paid *de facto*, otherwise then according to Human Law positive? that is, as subject to some Customes, to Statutes, to all civill disposition. If they bee in truth due *Iure Divino* (which Divines must determine of) they remain equally so aswel after as before Human Laws made touching them. But that is a question daily controuerted; and among the Clergie. Now, who euer disputes it and relies only on *Ius Divinum*, or the holy Scripture for the right of Tithes, doth but make way for him whom hee cannot perswade that they are due by the Law of God, to thinke that they are no way due. Which questionlesse was the originall cause of the Opinions of such as falsly taught them not at all payable, but arbitrarily as Almes even since Parochial right in them established. I meane the *Dominican* and *Franciscan* Fryers, and those other of a farre different stamp, *Wicliffe*, *Erasmus*, and the like. Had they sufficiently thought of the Constitutions and Practice of Christian States, whereby Tithes had been variously dedicated for the maintenance of the Euangelicall Priesthood, and settled for other holy vses either by continuance of time, by the owners conueyance, or by any such other civill Title (the strength whereof is immediatly founded in human Law) what colour could they haue

hate had to thinke that they had been only Almes? for what euer is lawfully established by a ciuill Title, is cleerly *debitum Iustitie*, not *Charitatis*. what brain then except one bewicht can think that Human positue Law and common Practice which v-
sually either declares or makes also a positue Law, are not most carefully to be sought after in inquiries touching this sacred Reuenue, which is no otherwise enioyed in any State then as that Law hath ordaind and permits. And let *Human Laws, Practice, and Opinions* bee as their Autors will; yet whatsoeuer argument may be found in the law of God for the right of Tithes, remains still as vn-
toucht and equally of his former power, as the heat and light of heauen euer did, notwithstanding the vse of Fire had vpon earth. And the truth is that diuers of them that writ, with more will then iudgment, for Tithes, fall often from their *Ius Diuinum*, before they are aware, and talke of them as supposd due also by Human positue Law of Practice. But they are farre enough from shewing what or where that Law or Practice is. what doe they else when they confound Tithes and consecrated lands together? and apply that to Tithes which is equally to bee spoken of lands given to the Church? I trust they mean not that the Church had an originall Title also *Iure Diuino*; to lands arbitrarily consecrated to it. Let not then either the purpose or conuenience of this Historie bee valued, from what distemperd Malice, Ignorance, or Zealousie haue cryed it down with in corners.

The learned Frier *Bacons* most noble Studies being out of the rode of the lazie Clergie of his time, were vehemently at first suspected for such as might preiudice the Church. *Reuchlin* and *Bude*, the one for his *Ebrew*, the other for his *Greek*, were exceedingly hated because they learned and taught what the Friers and Monkes were meere strangers to. Others about their time had like fortune. Neither was any one thing in the beginning of the Reformation so vnwillingly receiud or more opposed by such as labourd that Ignorance might still continue in her triumph, then that singular light to the cleering of error, the Geek Text of the New Testament, first publiht in print by *Erasmus*. and it was ordaind (as he saies) vnder great penaltie in
 x I know not what Colledge of *Cambridge*, that no Fellow of the house should be so impious as bring it within the gates. For the World hath neuer wanted store of such blockes laid in the way of Learning, as willingly endure not any part of curious diligence that seekes or teaches whatsoeuer is beyond their commonly receiud *Nihil ultra*. But there are others that both can iudge and doe with for all light to Truth. such they were that euen while *Ignorance* yet held her declining Empire, defended those Worthies, *Bacon*, *Bude*, *Reuchlin*, *Erasmus* and the rest that so sufferd: and to doubt whether this of mine shall find such also, were but to question whether euery man were yet a malicious Rebelle to Truth, and wholly without Ingenuity that performes euen as much in fostering her, as Time doth in breeding her. But

But neither is the Worke alone taxt by mistaking of the subiect, but also in regard of the Autor. what hath a *Common Lawyer* to do (so they murmur) with writing of Tithes. for by that name it pleases them to stile me. and I must confesse, I have long laboured to make my selfe worthy of it. But I would their discretions also would designe out to whom it belongs more to write the *Historie of Tithes*, then to a *Common Lawyer*. I expect not such a sottishnesse, as that they should so much as dream it to bee more proper to any of the other single professions of this Kingdome; except to a *Divine*, or a *Ciivilian*; vnder which name, because those which practice the Canon Laws here (according as the Common Laws permit) take their Degrees, in the Ciuill Law, I comprehend also the Canonist. and vse hath here made the name of *Ciull Law*, to denote both *Ciull* and *Canon*. For the *Divine*; what is there in the course of his Study restrained to his profession, that can neer enough instruct him in the *Laws* and *Practice*, especially of the *Christian* times. Nor is the *Practice* or *Laws* of Tithes among the *Jews*, as they are deliuerd & interpreted by their Doctors, more indeed restrained to the course of *Diuinitie*, then of *Law* and *Historie*. But should a *Ciivilian* rather haue dealt with it? if hee; then eyther (according to what we vnderstand by that name in *England*) as a *Ciivilian*, or as a *Canonist*. if as a *Ciivilian*; hee should then haue made that proper to himselfe touching which, in the whole body of his Law (though

a. Alberic. Gentilis
de pueris. Regis
absoluta, Sec
diffinit. 1.

(though hee take in also *Theodosius* his Code, the *Basilica* and the *Novels* of the later Easterne Emperors) not the least mention is found of Tithes belonging to the Church. Indeed, a case is put by *Vlpian* of ^b vowing of Tithes, which some old ignorant and barbarous Doctors vnderstand of Tithes among Christians. but they were long since laught at for it by him that ^c first happily laboured in the restoring to that Profession; the lost neatnesse and elegancie of the Text. That was cleerly spoken of the Roman vse only, & of vowing to *Hercules* or the like. But should the *Ciuilian* as a *Canonist* haue done it? what in all his *Decrees*, *Decretals*, and *Extrauagants*, though hee ioyned many armies of his Doctors, directs him to the *Practice* of the *Jews*, *Gentiles* or *Christians*? where shall the *Canonist* or the *Ciuilian*, or the *Diuine*, in the courses of their proper studie, find the many *Secular Laws* made in behalfe of the Clergie for Tithes? where the ancient practice of payment? If it be cleer then (as I hope none hath the impudence to denie it) that neither the *Diuine*, nor *Ciuilian*, nor *Canonist*, by the course of their owne appropriated Studies, can come to what is necessary in the knowledge of the *History of Tithes*, it will bee as cleere that none of them could challenge the meddling with it as a right specially belonging to any of their Professions. But neither indeed is it proper to any one alone of those that are commonly made Professions. The truth is, both it and not a few other enquiries of Subjects

b *L. 2. Si quis ff. de
pollucio.*

c *Basilic. l. 1. c. 1.
in l. quicunque ff.
de iustit. action.*

too much vnknowne, fall only vnder a farre more
 generall Study; that is, of true *Philologie* the only
 fit Wife that could be found for the most learned
 of the Gods. Shee being well attended in her
exquisita diuina or daily seruices of Inquiry, by
 her two Hand-maids *Curious Diligence* and
Watchfull Industrie, discouers to vs often from her
 raised Towre of Iudgment, many hidden Truths,
 that, on the deuell of any one restrained Profession,
 can neuer be discerned. and euery Profession takes
 from her to it selfe (as was long since obseru'd)
 some necessary part not elsewhere to be sought for.
 not much otherwise then as the Subaltern sciences
 do from their Superiors, or as they all do from
 that *Vniuersalitie* or *First Philosophie*, which is but
 the more reall part of true *Philologie*, and esta-
 blishes principles to euery Facultie that could not
 of it selfe alone know how to get them. But is not
 the companie of this great Lady of Learning with
 her attendants, as fit for a Student of the *Common
 Laws of England*, as for any other pretending
 what facultie soeuer? I neuer heard that shee was
 engaged alone to any beside *Mercurio*. Nor find I
 any conditions in the Mariage twixt her and *Mer-
 curio*, that shee should fauour any one particular
 Profession more then another. I know there haue
 been, and are many common Lawiers of other
 States (for euery State in Christendom is gover-
 ned by its own *Common Laws* and *Customs*, and
 hath truly its *common Lawiers* as is further shewd
 towards the end of the *Reuiew*) so farre from be-

d Acad. Mart. Ca-
 pellen lib. 2. de
 Nuptiis Philologiae
 & Mercurii. & de
 Philologiae aliquot
 vera consilia.
 Rutenbach. Instit.
 Orator. lib. 12.
 cap. ult.

XX
ing strangers to Her that they are all to be reputed
of her chiefest Darlings; and some of them are
hardly equalled among any other Professors. wit-
nesse in *France* those euer honord names, *Bude*,
Cuiacius, *Brissou*, *Tiraquell*, *Pithou*, *Pasquier*, *Le*
Tbou, *Ærault*, *Berterre*, *Sauaron*, and others; in
the Empire, *Gruter*, *Freber*, *Ritterbusse*; in the v-
nited Prouinces, *Groot*, *Heuter*, and the like else-
where. For these all were or are practicers of the
various *common* or *secular Laws* of their own Na-
tions, although they studied the *Imperialls* and
Canons in the Vniuersitie. and who of the learned
knows not what light these haue giuen out of their
studies of *Philologie*, both to their own and other
Professions? and that in rectifying of *Storie*, in
explication of good Autors, in vindicating from
the iniurie of time both what belongs aswell to sa-
cred as prophane studies? why then may not equally
a *Common Lawier* of *England* vse this *Philologie*?
and by consequent be a fit Autor of this *Historie of*
Tithes, as of a proper issue of *Philologie*? it
being indeed much more proper also to *Philolo-*
gie in a *common Lawier*, then in one of any other
Profession. For the two chief parts of it (that is,
Practice of payment and the *Laws* of Tithing, that
either are in force or euer were receiued touching
them in any State) were alwaies and are part of the
proper Obiect of his Studies. and what euer *Diui-*
nes or *Canonists* conclude of them; it is the *Secu-*
lar or *Common Laws* only that according to Cu-
stoms, and various Ordinances permit or restraime
the

the Canons in legall exaction of them, and that in other States aswell as in *England*. for howsoever it be affirm'd by ^a some which enough accurately think not of it, that the Clergie every where in the Western Church, being scarce a hundreth part of the People, are inricht with whole Tithes of Fruits of the Earth and of Cattell; yet it is certain that in no State of that Church, whole Tithes are vniuersally paid. But frequently Customs, not only of a *Modus* but *de non decimando* are by force of secular Law practiced. witnesse for the Empire, is in that Diet of ^f *Norimberg* vnder *Charles* the fift, where the lay Princes of the Empire complaine against the Church for offering to put their Canons for Tithes in practice; *Etsi Laici per multa annorum curricula de certis eorum prædijs, neque maiores neq; exiguas, ut vocant, præstiterint Decimas &c.* As much for *Spain* is in ^g *Gouaruuias*; for *Italie*, in *Vgolin*, ^h *Caietan*, others; for *France*, in *Papon* on the customs of *Burbon*, *Boerius* on those of *Berry*, *de Grassalio*, beside the many Arrests of Parliament that are adiudged against the Canons. But these things are more particularly shewd in the Seuenth Chapter, wherein (as in the rest) we haue affected rather what is Autoritie enough, then what is various. Who now can shew colour why this was not a worke proper enough for a Common Lawier? But this whole Premonition, I thinke, is as well more then is necessarie to the truly iudicious, as it may perhaps seem lesse then what satisfies to the numerous Pretenders, that neither know any way

^e *Reclia. de Repub.*
lib. 5. cap. 2.

^f *Comit. Norim-*
berg. 1522. Graue-
mine 45.

^g *Varia. Resoluc.*
lib. 1. Cap. 37. &
Prædic. quæst. 35.
^h *De officio & po-*
testate Episcopi
part. 1. cap. 6.
ⁱ *Ad 2. 2. D. 26.*
q. 37.

that lies out of their beaten Rode, nor value books but as Stationers do, nor admit willingly of any other kind of Studies then such as are more like fordid Occupations then Liberall Professions. But I stay you too long here, Reader. Trie now how I haue performed my promise; spare not to trie with your most censorious examination;

sed magis acri

Iudicio perpende; & si tibi Vera videtur,

Dade manus; aut, si Falsa est, accingere contra.

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Between

Between about the year D. CCC.
and neere M. CC.

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The
Historie
of TITHES.

Of Tithes before the Law.

CAP. I.

I. Melkizedek had Tithes only of the spoiles of Warre giuen him by Abraham. *anahia* denotes spoiles of Warre, and perhaps also profits taken from the ground, or *Ruta casa*.

II. Jacobs vow and payment of Tithes. Both Abraham and Iacob were Priests when they paid Tithes. In whom the Priest-hood was before the Law.

III. Whether any certaine Quantities were observed in the Offerings of Cain and Abel.

IV. A Cabalistic operation in numbers by which Tithes and the first Fruits, offered by Abel, might haue a mysticall identitie. Such operations were amongst old Christians also, but meerly vaine.

I. **A**bram, in his return from redeeming his nephew Lot with his substance, and all the substance of Sodom and Gomorrah, was blessed by Melkizedek King of Salem and Priest of the most high God; and gaue him Tithes of all. So is the holy Writ. But what that all was, is not cleerly agreed vpon. it is taken to be *ya va va mical agbsber lo*, that is, of all that he had, as the ordinarie Glosse of Salomon Iarchi there interprets. and ex-

A

pressly

parts only? How stands that with giving Tithes of all? It must therefore be interpreted of the *spoiler*. So St. *Chrysostome* understands the Text. *ἡγεμόνα*, saies he, *ὁ ἀπορροῦς ἀβραάμ*, that is, the *spoiler* are called *ἡγεμόνα*, whereof, as he notes also, *Abraham* made *Melchizedek* a partaker, by so giving him the first fruits of his martiall performance. Accordingly doth *Sulpitius Severus*, in his storie of *Abraham*, call his tenth *decimam prædæ*, which is also expressly iustified by S. *Hierome*, often stiling it *decimas spoliatorum, prædæ & victoriæ*; who well withall confesses, that, were it not for the holy exposition in that Epistle to the *Ebrews*, the relation in *Genesis* might aswell be understood, that, on the other side, *Melchizedek*, as a bounteous Ancestor, had given to *Abraham* the tenth part of his estate; the Text indeed being both in the *Ebrew* and *Septuaginta* so, that, no name immediately preceding the mention of the gift, it sufficiently thence appears not, who was the giuer. *Vtrumque* (saies S. *Hierome*) *intelligi potest & iuxta Ebraicum, & iuxta Septuaginta interpretes, quid & ipse acceperit decimas spoliatorum; & Abrahæ dederit decimas substantiæ suæ; quanquam Apostolus in Epistola sua ad Ebreos apertissimè designat, non Abraham suscepisse à Melchisedek decimas diuitiarum eius, sed de spolijs hostium partem accepisse Pontificem*. Neither is this interpretation of *ἡγεμόνα* dissonant from ancient vse among the *Greeks*. Indeed it elsewhere rarely occurs in this sense; but cleerly in that old proverb, *ἡγεμόνα Πυγμαλίων καταρτίσας*, To put an armor, taken from a *Pygmie*, on a *Colossus* his back, it de-

Philofrat in vit.
Sophist in Niceta.
Vnde emendes o-
porter depraui-
tos Suidae Copices
in expolitione.

Philon. ff. de a-
llimib. emp. et
vendit. l. 17. § 6.

Perr. Glosa
verb. Turis in
p. 72.

Glossar. ven.
Gracian. edit. ab
H. Stephano.

notes nothing else but *ruina*, or *ruina*, that is, *spoiles* taken from dead or living, according whereto both *Hesychius* and *Suidas* haue expounded it. From which sense, I ghesse, it hath also been brought to signifie those kind of profits, taken (as spoiles) from the Land, which the Ciuilians call *Ruta caesa*, that is, ^h trees cut down, coles, sand, or chalk digged vp, or the like, which we stile things *seuered from the free-hold*, and turnd into chattels, according as the Greek Lawyers ⁱ named them *τὰ ἐκ τῆς ἀγροῦ κατὰ φύσιν*, *Things that were taken from the ground, or free-hold.* for so it agrees with our phrase. That, which first bred me this coniecture, was a corrupted place in an old ^h Glossarie, where *ruicilia* is interpreted by *Ruticilia*. what can *Ruticilia* there signifie? I conceiud it to be depraud for *Ruta caesa*, which is often read as one word. and no man can denie but that *Ruta caesa* may easily be stiled *spolia* or *exuvie villa*, and by an easie metaphore be expressed in a word that signifies spoiles of warre. many corruptions much further off from the true originals, are obuius in the same Glossarie.

Glossar. 28. 22.

in Inf. Archanlog.
c. 16.

II. The next passage of Tithes is in *Iacobs* vow. *This stone*, saith ⁱ he, *which I haue set vp as a pillar, shall be Gods house. and all that thou shalt giue me, I will Tithe and giue the Tenth to thee.* which (*Iosephus* saies) vpon his return, being after XX. yeers, he ^m performed, offering the Tithe of all his substance, or *ἀγῶν περιποιήτων*, *the Tithe of all be had gotten.* Into whose hands he gaue his Tithes, appears not. But the chiefest Priest of that time was his

his father *Isaac*. For before *Aaron*, the Jews say, the Priesthood was wholly annex to the first born of families. Which ^a agrees well with the sanctifying of the first born, commanded in *Ægypt*. Hence it comes that *Melkizedek* is commonly reputed to be *Sem*, the eldest sonne of *Noah* (for so in this declaration he may be cleerly admitted; although no small controuersie be whether he or *Iapheth* were the eldest) and *Noah*, *Abraham*, and *Iob* and the like are accounted, ^o by this right, Priests of that time. and as *Abraham*, being in a right line X. degrees from *Sem*, gaue tithes to him being the eldest Ancestor of the house, or first-born, and so a Priest in *Salem*; so it may be thought, that *Iacob* paid his vow into the hands of *Isaac* the chief of the family then living as a first-born, and a Priest also. But remember withall, that *Iacob*, although the yonger Sonne, is reputed also to haue had this Priesthood by the sale made to him of his elder brother *Esau's* birth-right, to which a Priesthood was incident. So was the ancient opinion of the Iews, as Saint *Hierome* ^p relates it. *Simul & hoc tradunt, sayes he, quod vsq. ad sacerdotium Aaron omnes primo geniti, ex stirpe Noe, fuerint sacerdotes & Deo victimas immolarent, & hac esse primogenita quæ Esau fratri suo vendiderit Iacob.* And expresse mention is of his exercising this holy function in 9 sacrifices, during his fathers life. For, hauing gotten the right of primogeniture, and being long seuered from his fathers house, and hauing a distinct family and posteritie in his own power, notwithstanding his father were then living, yet had he that kind

Exod. 13. 2.

o Origen. lib. 1. in Iob.

p In Epist. ad Eusebium.

q Gen. 32. 36.

of Priesthood in him. For if this holy right came not to any till he had been the eldest of the family as well as the first born, how could *Abraham* be accounted for a Priest? as expressly *Origen* and others reckon him; which the forme of his offering his sonne *Isaac* also iustifies. He was neuer both first-born and eldest of his family. For *Sem* liued after him about XL. yeers, and kept that title from him; but a first-born he was, and deuided also from his fathers household at the time of his tithes giuen him. whence obserue by the way that both *Abraham* and *Jacob*, according to this right of that time, must be Priests also, when they paid these tithes. No other expresse mention is of tithes before *Moses* his time; vnlesse, with the Iews, you dream, that the Leuiticall Law was written before the Creation.

III. Let the ancients seeme to haue obserued a respect had to the quantity of what was, as a part of the yeerly increase, consecrated in those times to the Lord; and that euén in the first memorie of sacrifice. *Cain's* offering was not regarded, they^a say, because, *quod offerebat non recte diuidebat*, hee did not well deuide what he offerd: which seemes to designe out a defect in the quantity; as if specially some *quota pars* were at that time required. But this reason was from no other cause then the mistranslation of the text in the Story of *Cain*. For, where the^b original is thus, *Why is thy Countenance cast downe? if thou doe well, is there not remission? if thou doe ill, sinne lyeth at the door*; they read it farre otherwise, and thus; *quoniam, nonne, si recte quidem offeras; non re-*
Ete

^a *Ternus, lib. ad-
uersus Iudeos, all)
idem sapient.*

^b *Gen. 4. 7.*

Ete autem diuidas, peccasti & quiesce : which is all one with the Septuagints text, that in the Primitive times was chiefly in vse, *ἐὰν ἡδὴν*, say they there, *εὖ προσέφερεν, ἡδὴν δὲ καὶ εὖ προσέφερεν ἡδὴν ἰδὼν*. If thou offer well, but deuidest not well, hast thou not sinned? bee quiet. And this passage of *well deuiding*, did *Iulian*, that witty *Apostata*, take, for a speciall question to oppose a Bishop in his time. But most agreeable to that translation, and not dissonant from the originall, is, that hee gaue with a grudging minde, and not of the best and first of his fruit, as hee ought to haue done, and as the Heathen euer did, or by their Pontificall Lawes ought to haue done in their *Præmesum*, that is, the first fruits of their Corne, or their *Calpar* or *vinum inferium*, which was the richest of their wine. And it is expressly said, that *Abel* brought of his first fruits, but *Cain* only of his fruit of the ground; the one giuing the Lord a portion of the best, the other not regarding of what time, what worth it were, so it were of his fruit. So, here is not any *quota pars*, or certain quantitie noted, but *ἀπὸ τοῦ νοῦ*, or the mind only of him that offered, and the qualitie of the oblation.

c. *Cyril. ad Rom.*
Iulian. lib. 10.

d. *He D. Elyss.*
in Genes. 2. 2. 1. 10.
D. Ambros. lib. 1.
de Cain & Abel.
cap. 7. & lib. 2. c. 8.
vide Epist. ad Hebræos, cap. 11. 4.

IV. Yet to, if some Cabalisticque and doting curiosities were of value, there might be some identitie, or at least some affinitie between the first fruits of *Abel*, and the tenth part. The first fruits are in the text called *בְּעֹרֹתָיִם* *becoroth*, the tithe *מַעֲשֵׂה* *maishser*. Now the Iews make great and hidden correspondencies twixt things denoted by any two words, whose seuerall numbers made out of their letters, are

Archangel. in
Dignat. Cabalistic
v. 19.

are equall; their letters, as the *Greeke*, being all numerall. and two kinds of this *Arithmetique* they haue: the one in greater numbers, which is frequent with them; the other in lesse. their practice * in the second kind is thus: Out of euery Centenarie and Decad of the letters of a word they take a vnitie, and adde these to the rest, that is, the lesse numbers; by which operation, if two words agree in summe, they thinke forsooth some great mysterie, of mutuall relation, twixt the things signified, is discovered. Those two of the *first fruits*, and *tithes*, by this way, are equal. For example. Dispose the letters and their numbers thus.

כ ב ג ד ה

400. 200. 100. 20.

ו ז ח ט י

200. 300. 70. 40.

in the first, out of 400. 200. and 20. take 4. 3. and 2. that is a vnitie out of euery Centenarie and Decad; and the summe is 8. which, added to the lesse numbers, make 16. Likewise in the second, out of 200. 300. 70. and 40. take 2. 3. 7. and 4. (there being no lesse numbers) and you haue the same summe as in the other, that is 16. But take this only as a tast of such impious libertie as these kind of vanities giue (mongst the *Iews*) to make any thing haue mysticall reference to euery thing. Yet neither were *Christians* without the very like in the primitiue times. Witnes the *Marcosian* and *Colabarsian* heresies in their * and *. made the same with * and, and diuers other

other like by agreement in number. They indeed went so farre in this ridiculous kind, that they determined *ut in plenitudine & perfectione veritatis in istis literis (numeralibus) esse dispositam*. Witnes the *Basilidian* god, *Abraham*. Nay some Fathers of those times so much regarded this arithmetical way of search, that in this very storie of *Abraham* successe with his companie of 318. and of his recovering the goods, the women, and people, they delievered (that the mysterie of our Lord crucified, was denoted. that number 318. is in Greek thus; *ϞϞϞ*. For they reckoned out of Greek, as the Jews out of Hebrew. in the 300. figured by *Ϟ*. they supposed the Crosse foretold; as otherwise it is usually obserued upon that of *Ezekiel*, cap. IX. 4. And they took for the two first letters of our Saviours name *Ihs* or *Ies*. Whereupon *Prudentius* relating the victorie, saies, we should be very rich, as *Abraham* in his spoiles,

*I Totus illi de
Heres. id genus
pluribus habet
etiam Basilidiani.
Tota. I. de. cap. I.
& Irenaeus lib. I.
cap. 10.*

*Clam. Alen.
Sermat. 9.*

*In Profer. ad
Luxuriosos.*

Si quid recenti, bis nouentis additis,

Possint, figura nouerimus mystica.

where, for *bis*, some Copies, without sense, haue *bis*. but who sees not the vanitie of such mysteries? Although too, the unlimited libertie of our times, in so confidently daring to tell vs the mysterie of the number of the Beast, would make a man giue the more regard to these collections out of numbers. Euery great Clerk, that deales with it, hath, for the most part, his feuerall word to make vp 666. Some for vs; some against vs. And no doubt is (that one old one may be added) but he; which, long before Lu-

Apoc. 13. 18.

B ber,

Turn over three leaves to

Thomas Elton
Prior Londen
Chron. Hen. 5. in
Biblioth. Bodleia-
na.

1 Hieron. Epist. ad
Paulinum.

in Bedae. Metaph.
lib. cap. 7.

ther, made Sir Iohn Old-Castles name to fulfill that prophesie, thought he had been as neer truth as the best of them. Out of IOHN OLD-CASTLE in numerals & he makes 701. and thence subtrahes the year of his age, wherein he so charitably and stoutly tooke part with Lollards, and was condemned for heresie, that is, 35. and the rest being 666. notes him out (saies he) with the Character of the Beast. *risum teneatis* this in most miserable verse he expressed. Nor hath this dream of his, place here otherwise than as an old patterne of trifling boldnes, vsed in the later Arithmetique of many on that passage in S. Iohn: in whom are *1 tot Sacramenta*, quoted *verba*; and of whom the answer giuen by that great Doctor, Calvin, was as iudicious as modest. he, being demanded his opinion, what he thought of the Revelation, answered ingenuously, *he knew not at all what so obscure a Writer meant*. he might best haue spoken it on this particular of the number; to which, found by arbitrarie collection, who euer giues much credit, might unhappily perchance be induced to beleue some mutuall respect twixt *Abels Offering*, and *Abrahams Tithes*.

How, among the Iews, *Tubes* were paid or thought due.

CAP. II.

I. First fruits, and Heaue offering (that is, sixtieth parts at least) first were paid out of the fruits of the earth.

II. The

Chap. 2.

I. The first Tithe was paid to the Levites (who out of that paid a Tith to the Priests) and then the second Tithe.

II. The error of them that make a third Tithe. The second Tithe of every third yeere spent on the poore what they take the yeere of Tithing to signifie in Deuteronomie.

IV. Above a sixth part was yearly paid by the husbandman: but no Tithe by him to the Priests.

V. How their Cattell were tithed.

VI. A discontinuance of payment among them. Honester Over-seers chosen for the true payment. Demay that is things doubtfull, whether Tithes were paid of them or no. Passages in Epiphanius and S. Chrysostome, of their Tithing.

VII. Their Tithing of every herb. what their Canonists hold Tithable.

VIII. Their Law of Tithing (after the destruction of their second Temple) ceased, by the doctrine of their Canonists. which teaches also that they are not to pay elsewhere then in the Land of Israel, and some adiacent Countries. Presbyteratus Iudæorum totius Angliæ anciēntly granted by the English Kings.

I. **T**He yearly increase being either fruits of the ground or Cattell; In the Law, of fruits of the ground, first, the first of the forwardest were offered to the Priest in eares of Wheat and Barley, Figs, Grapes, Oliues, Pomegranats and Dates. And, of these seven only, the first fruits were

B 2

paid

Leuit. 23. 10.
Num. 18. 26.
1. in Talmud, in
Seder Zeraim,
Mafsech Bikkurim
f. 2. v. 1. c. 1. v. 1.
c. 1. v. 1. c. 1. v. 1.

pages 1243. turn back

Deut. 18. 4.

Salomon Iorab
Hil. locum. cate-
Turis. & D.
Ieronymus ad Ro-
m. cap. 15. & Cas-
sianus collat. 21.
p. 3.

Hanc loquendi
formulam habes
ad D. Marthe-
m. cap. 20. 15.

Deut. cap. 15. 23.
11.

paid in what quantitie the owner would. next, the *Therumah* or *beave Offering*, or *first Fruits of Corn*, *Wine*, *Oile*, *Fleece*, and the like, were also given to the Priests. But it being not determined by *Moser* of what quantitie this *beave Offering* should be, the Jews anciently assent it to be enough at the *fortieth* part; but so, that no necessitie was that every one should pay so much. he that paid a *sixtieth* part was discharged; and many of the better devotion offered but a *fortieth*. The *sixtieth* part they call *תרומה ששיתית* that is, an *indifferent* or *competent Therumah*, or *beave offering*, which they namd also *תרומה גדולה* that is, the *great beave Offering*. the *fortieth* they call *תרומה קטנה* that is, a *Therumah* of a *fair* or *eye*, or *liberally given*; & the *sixtieth* they call *תרומה קטנה* that is, a *Therumah* of an *ill eye*, or an *niggards gift*. But you may observe too, that this, which they call a *niggards gift*, was not beneath the quantitie of the *Therumah* appointed in *Ezekiel*, where the words are, *This is the Therumah that yee shall offer, the sixt part of an Ephah of an Homer of wheat, and yee shall give the sixt part of an Ephah of an Homer of Barly.* it is the same as if he had said, *ye shall offer for a Therumah of the sixtieth part of every Homer for an Ephah* (being the same measure with a Bath; that is, near our common Bushell) was the tenth part of an Homer; therefore the sixt part of an Ephah, the sixtieth of an Homer. After the *Therumab* offered to the Priests (every kind being given in season) out of the rest were taken the *Tuber*, which are best divided into the *first* and *second Tuber*.

II. The

I have The first Tith was paid, out of the remainder, to the Levites at *Ierusalem* by that name it is every where entitled, and, out of this Tenth received by the Levites; another Tenth they paid to the Priests; as a heave Offering out of their Tenth, which they called also the *Tithe of the Tithe*. For the Priests received no Tithes of the Husbandmen: only the Levites received Tenth from them, and paid their Tenth to the Priests; being (as S. Hieronim says) *tanto illis minores, quanto ipsi maiores populo*. So Clergie men, by that example, have paid Tithes to the Pope; and so by a late Law they doe in this Kingdome to the Crown. Neither might the Levites spend, to their owne vse, any part of theirs, till this Tenth of the Tenth were paid. Afterwards it might be imploied for their maintenance generally where soever. This first Tenth paid, the nine parts remaining, were accounted *profane*, that is, profane, or for common vse; yet not to be spent by the Possessor, till he had taken out of those nine another Tith, which he was, the first two year, to carie to *Ierusalem* in kind, or if the way were too farre, to turne it into money (adding a fift part of the value: for to this Tithe do the Iews apply that of *Levit. XXV II. 30,* and 31.) and spend it there at the Temple in Feasts; which were neer like to the old Christians *Agape* or *Loue-dayes*. and every third yeer the same he was to spend vpon the poore and Levites within his owne gates. After those Tenth thus disposed of, the remnant of that yeers increase they called *teruma*, that is, as if you should say, every way prepared or

first for common use, or absolutely Lay Chattels; the first nine parts being so only respectuely. This other

Tithe they stiled their *second Tithe*; or Tithe for Feasts, that is, *And the second Tithe*.

III. Some make a *third Tithe*, as *Tobit*; expressly vRING the name of *And the third Tithe*.

(sayes he) And the third Tithe I haue giuen to whom it was meet. But he means

only the *Tithe of the third year*, that is, the Tithe which euery third year (after the first Tithe paid) was

to be laid vp by the husbandman in his owne gates for the *Leuite that is within his gates, the stranger, the*

fatherlesse, and the widow. Which *Iosephus* also names *And the third Tithe to be bestowed*

euery third year and this the *Rabbins* call *And that is, the poore mans Tithe.* And it is also stiled a

third, but falls better vnder the *second* of our Diuision, and need not to made a *third*, nor is it. Nor, by

the great *Scaligers* leaue, can it be accounted the first, nor doth it at all answer to that. For the first

Tithe was paid euery yeere, sauing the *Sabbaticall*. otherwise, whence should the *Leuits* and *Priests*

haue their liuelode of that yeer? and so expressly affirme the great *Doctors* of the *Iews*; and that according to their *Talmud* or *Canon Law*; that the

first yeer first they paid the first Tithe, then the second, so in the second yeer; and that, in the third yeer,

after the first Tithe paid, they paid the *And that is, the poore mans Tithe* and that yeer

that is, the second ceased, or was not paid. *Ben-Maimons* words are, that in the third and six yeers

the

the poore mans Tithes was *וְהָיָה יְהוָה אֱלֹהֶיךָ*, that is, in *the*
head of the second Tithes. Neither can that in *Tobias* touching
 the payment of the second Tithes *every* year (wherein both the *Greek* and *Ebrev* of him agree, although in other things they much differ) be so
 otherwise well vnderstood, then for *every* of the two or three
 years, vnlesse that text be wholly contrarie to the known practice of the *Jews* Canons. So then *every* third
 year the *Leuits* at the Temple mist their second Tithes
 for their Feasts and Loue-dayes; the same being giuing
 charitably, and by diuine Ordinance, spent at home in the
 gates of the husbandman. Neither doth the second and this
 poore mans Tithes differ in substance, but only in circumstance.
 The diuision of both, is exactly the same, and the persons appointed
 for the eating, are vpon the matter so too. For as the *Leuits*,
 ministring in their course at the Temple, were to haue part in
 the Feasts made of the second, so were the *Leuits* and the poore
 in the countrey entertained with this of the third yeere.
 The place, where the bestowing was, makes their difference;
 substantially they are the same, and fitly goe vnder one name,
 which is fully to me confirmed by the *Septuagint* translation
 of that place in *Deuteronomy*, which we read according to the
Ebrev thus: *When thou hast made an end of Tithing, all the Tithes of thine increase*
in the third year (which is the year of Tithing) thou shalt giue
to the Leuits, strangers, fatherlesse, and the widow, that they
may eat within thy gates, and be filled. They there translate it.
Id est, in iherosolima, in iherosolima, in iherosolima.

*Remember over these things
 I have patience.*

When thou hast ended the Tithing of all the fruits of thy ground, in the third year; the second Tithethou shalt give to the Leuit and the stranger &c. as in the common text. Where plainly, you see, the poore mans Tithe is expressly called the second Tithe, which iustifies our Diuision. Doubtlesse, they there in stead of *שנת הבאגשר* *shenit habaigsher*, that is, the year of Tithing (as the text is) found in their Hebrew Copies, *שנת הבאגשר* *shenit habaigsher*, which they took for the second Tithe, knowing that in truth that place meant no other. Diuers passages in their translations are vpon such differences, and they oftentimes giue thence a kind of commentarie as well as a translation. Neither is it ill context, that *shenit* of the feminine gender should be ioind to *baigsher* of the masculine. it is not without frequent example in holy Writ. That their word *מאגשר* (not very vsuall for Tithe) was most proper, and bath no worse originall then *Athen* it self, where by that name, the Tenth of Mules and Goods confiscat, was sacred to *Minerva*. But this place of the year of Tithing, is interpreted by the common Glosse of the Iewes by the year of one Tube, as if the text had been *שנת הבאגשר* *shenit habaigsher*, that is, the year of one Tube, or of paying only one Tube. Which in substance exactly agrees also with the meaning of the *Septuagint*. For in the third yeere, sayes *Iarchu*, there was only one Tithe paid of the two commonly spoken of, that is, of the first and second. The first was only paid to the *Leuit*. The second, by that name, was not: but the poore

1 Xoph. lxx.
Grac. a.

in Salomon Iarchu
ad ill. loc. Deut.

poore mans Tithes in stead of it: and he so expounds it, that hee takes the mention of the *Leuits* there to designe out the first Tithes of that third yeer paid at *Ierusalem*, which plainly also confirms what is here before declared. The *second* then, and the *Tithe of the third yeer* are the same in substance. The payment of all appeares in this example.

IV. After the first fruits paid in eares, admit The increase 6000. Ephahs; the *beaue Offering* at least must be 100.

The remainder 5900. The *first Tithe*, 590. and out of this 59. to the Priests.

The remainder 5310. Out of this, the *second Tithe*, 531. which euery two yeeres the *Leuits* had at *Ierusalem*, and euery third yeere was spent in the gates of the husbandmen.

The rest being 4779. was kept for the husbandman.

So that of 6000. Ephahs, the *Leuits* and poore had in all 1063. whole to themselves, the Priests 159. and the husbandman only 4779. Hee yeerely thus paid more then a *sixt part of his increase*, beside first-fruits; almost a fift. Many of no small name, grossly slip in reckoning and diuiding these kinds of their Tithes. But this here deliuered, is from the holy text and the *Iewish Lawiers*.

V. Of their *Cattell*; the *first borne* were to the Lords. paid to the Priest of clean beasts in kind; of vnclean in money, with a fift part added. Of the in-

C

crease

crease of them, one Tithe only was paid, and that to the Leuits. *Every Tube of Bullock and of Sheep of all that goeth vnder the Rod, the Tenth shall be holy to the Lord*, sayes holy ° Writ. Thence at the Tithing they vsed to shut the Lambs (for example) in a sheepecote, where the straitnesse of the door might permit but one at once to come out. Then, opening the door, either gently to hunt them out, or by placing the Ewes bleating neere them without, so to cause them run forth one by one, while a seruant standing at the door with a rod coloured with oker, solemnly told to the Tenth; which with his rod he markt. so they vnderstand going vnder the Rod. that so markt, whateuer it were, male or female, worst or best, was the Tithe, and might not be changed.

VI. How the payment of these Tenths was either obserued or discontinued, partly appears in holy ° Writ, partly in their institution of more trustie Ouer-seers (whom they called *מְשִׁיבֵי*) for the true payment of them. For after the new dedication of the Temple by *Iudas Machabeus*, vntill his fourth successor ° *Ioannes Hyrcanus* (being neer thirtie yeers) all duly paid their *first fruits* and *The-rumabs*, but the *first* or *second Tube* few or none iustly; and that through the corruption of those Ouer-seers. Whereupon their great *Sanedrim*, or Court of seuentie Elders (that is, the *בֵּית דִּין הַגָּדוֹל*, that is, *the greatest Court*, that determined also, as a Parliament, of matters of State) enacted, that the Ouer-seers should be chosen of honest men; and withall, that of such things, whereof, by such corruption, or otherwise,

Leuit. 27. 26.
32.

p. Tarchi ad Leuit.
cap. 27. & Ramban
on Maasch, de pri-
mogenitiis, c. 7.

q. 2. Paralip. 31.
Malach. 3. &
Nehem. cap. 13.

r. Ramban de
decimis, cap. 9.

otherwise, it was indifferently doubtfull, whether Tithe were iustly paid or no (of which kind, almost all increase, at the time of this act made, was) a *beaue Offering* or *Tberumah* of the Tenth of all, that is, a *bundreth part*, should be giuen to the Priests, and then the second Tithe at the Temple should be paid. but no first Tithe or poore mans Tithe was paid of any such things. These kind of goods they called *דמאי Demai*, whereof a speciall *Massebeth* or treatise is in the *Talmud*, in the *Seder Zeraim*. From that act of the *Sanedrim*, to the last destruction of the Temple, it seems, the iust payment of Tithes continued; and thereof testimonie is (for the time neere the destruction) in *holy Writ*. But in *Tithing* and offering *Tberumaks*, the Pharisees were most curious and deuout. they gaue perhaps *Tube* after both the *Legall Tubes* paid, beside *fiftieth parts*, and sometime *thirtieths* for their *Tberumaks*. So may be vnderstood that of them, *ἐνδεδότω δὲ τὸν δέκατον, τὰς ἀρχὰς ἰδίῳ, ὡς ἀπορίδας τοῦ ἐνδεδότου*, which you may interpret, *they tithed what was already tithed, they gaue first fruits, thirtieth parts and fiftieth parts*. but I dare not iustifie the translation. neither doe I belecue, that *Epiphanius* there sufficiently vnderstood what they did in their Tithing, nor is his meaning easily, I doubt, apprehended. The like may be, with modesty enough to, said of *S. Chrysostome*, speaking of the Iewish Legall liberalitie to the Leuits. *Ἐρρίνον, ἡγεῖται ἡμεῖς, ὅτι ἰουδαῖοι ἰδίῳ δέκατον, ἀρχὰς, πάλιν δέκατον, καὶ πάλιν ἄλλας δέκατον καὶ πάλιν τὰς ἑτέρας τεσσαράκοντας καὶ τὸ σκεῦος καὶ ἕδρα ἱερῶν ἐν πᾶσι ἰδίῳ*. *Obserue but how much the Iews gaue*

Epiphanius, lib. 1, cap. 79.

Epiphanius, lib. 1, cap. 16. Vide, G. placet, Casaubon, ad Phil. 2, cap. 63, & 64.

In form, 103. τὸν δέκατον, ἡμεῖς, ὅτι ἰουδαῖοι ἰδίῳ δέκατον, ἀρχὰς, πάλιν δέκατον, καὶ πάλιν ἄλλας δέκατον καὶ πάλιν τὰς ἑτέρας τεσσαράκοντας καὶ τὸ σκεῦος καὶ ἕδρα ἱερῶν ἐν πᾶσι ἰδίῳ.

2 Exod. 30. 12.

(to their Levites and Priests) as *Tenths*, first *Fruits*, then *Tenths* again, then other *Tenths*, and again other *thirteenth*, and the ^a *Sicle*, and yet no man said they eat (or had) too much. so are his words in two places of his works exactly the same; saving only that in one the varietie of reading hath *triginta* for *thirteenth*.^{*} I confesse I equally am ignorant of both. neither is his enumeration consonant with what the Moniments of the Jews or the holy Text will warrant. Coniectures vpon it, I leaue to others. some probable enough might here be brought, but I willingly abstaine.

7 Luc. 11. 42.
Matth. 23. 23.

7 Deut. 16. 11.

a Rami. part. 3.
maff. di Thurn-
meth. cap. 2. &
Maford in pro-
cept. 145.b Levit. 19. 9. &
10.

VII. That tithing of *ἅντα ἀλάττω*, every herbe, which is spoken of in the Gospell, (and obserued by the *Scribes* and *Pharisees*) was neuer commanded in Scripture, nor by their Canon Law requisit, according to the opinion of their Doctors, who restraine the payment of Tithes to that ^a *תבואה*, that is, *thy increase*, spoken of by *Moses*; and comprehend no herbs vnder that name. They deliuer indeed that by tradition from their fathers, all things growing out of the earth, and fit for mans meat, are titheable, which their ^a Lawyers thus regularly expresse, כל איכל אדם חשבון שגדלו בו מאד חייב בתרומה וכן במעשרות that is, *Euery thing that is kept as mans meat, and hath his growth from the earth, must pay the beaue Offering, and likewise Tithe*; Whence they make such herbes as are mans meat, titheable, but all such as are not mans meat, they discharge of Tithes. and out of that rule also they except whatsoeuer was gleaned ^b either out of eares

of

of Corne, or Grapes, or had out of the corners of the field left in haruest. But, it seems, that for this payment of Herbs, the Pharisees were of the truer side. Our Sauour likes well their payment, and expressly saies, *they ought not omit it*, which admonition of his was to them while yet the Mosaicall Laws were not all expired by the *consummatum est*.

VIII. After the second Temple destroyed, and dispersion of the *Jews*, their Law of *first fruits*, *Tithes* and *Tithes*, with them ceased. For their Doctors determin that regularly no inhabitants, but of the land of Israel, were to pay any; although also among them be a wise exception for the lands of *Senaar*, *Moab*, *Ammon*, and *Aegypt*, because the first is neer their land of *Israel*, and many *Israelites* went thither and dwelt there, and the other three are round adioyning their land of *Israel*. But they deliuer that who so of them took the profits of land amongst the *Cutbeans* or *Samaritans*, their old enemies (or elsewhere in *Aram*; and so, it seems, by consequent in any other land, sauing which they except) was not to pay any. touching which point many speciall cases are put by *Rabbi Ben Maimon*. At this day by their Law they pay none; Those that liue in their land of *Israel*, for want of their Priesthood and Temple; those that liue dispersed in other Countries, both for that reason, as also for the other which restrain the payment of them to *Canaan*. and herein they all agree. But the great *Ioseph Scaliger* saies, he askt some of them whether, if they might again build their Temple (as after the captiuitie they

c. In l. d. Chrysost.
trist. de Throno
c. 1. d. Miquel
Princip. 133.

did) their Laws of Sacrifices, first Fruits, & Tithes, would be then reuiud; and their answer was, that to build it again were to no purpose, because they had no lawfull Priesthood, there being not one of them that can proue himsele a Leuit, though many pretend to be so, and some bear also the office of a kind of Priesthood amongst them. And (for example herein amongst our own Ancestors) when the Jews liued here they had, it seems, one generall or high Priest ouer them, vsually confirmd at least, if not constituted, by the King, for life, as appears by Record, prouing that both *Richard* the first and King *Iohn* did by their Patents grant the same. the Copie of it being a most rare example and not from this purpose, take here transcribed. *Rex omnibus fidelibus suis, & omnibus & Iudæis, & Anglis salutem. Sciatia nos concessisse, & presenti Charta nostra confirmasse Iacobo Iudæo de Londonijs Presbytero Iudeorum, Presbyteratum omnium Iudeorum totius Angliæ, habendum & tenendum quamdiu vixerit, liberè, & quietè, & honorificè, & integrè, ita quod nemo ei super hoc molestiam aliquam, aut grauamen inferre præsumat. Quare volumus & firmiter præcipimus quod eidem Iacobo quoad vixerit Presbyteratum Iudeorum per totam Angliam, garantetis, manuteneatis & pacifice defendatis; & si quis ei super eo forisfacere præsumserit, id ei sine dilatione (salua nobis emenda nostra) de forisfactura nostra emendari faciatis, tanquam Dominico Iudæo nostro quem specialiter in seruitio nostro retinuimus. Prohibemus etiam ne de aliquo ad se pertinente ponatur in placitum, nisi coram nobis aut*

Rot. Cart. 1. Reg.
Ioh. part. 1. memb.
28. Cart. 171.

aut coram Capitali Iustitia nostra, sicut Carta Regis
 Richardi fratris nostri testatur. Teste S. Bathoniensi E-
 piscopo &c. Dat. per manus H. Cantuariensis Archie-
 piscopi Cancellarij nostri apud Rotbomagum XXXI.
 die Iulij anno Regni nostri primo. Its true that Pres-
 byteratus might denote aswell some Lay eldership.
 but as vnlikely 'tis that in that age the Clergie men
 that were officers of the Chancerie, and most com-
 monly drew the Patents, at least iudged of the lan-
 guage, would transference their name of *Presbytera-
 tus* to any such signification; so also I suppose that
 any such Lay or Ciuill Officer among them could
 not haue scaped often mention in the Records of Lu-
 daisme, yet remaynig. Many of them I haue peru-
 sed, but neuer met with the name elsewhere then in
 this Roll. But to this Priest *Iacob* or other like him
 among them, no Tithes, first Fruits or Therumahs,
 were, or are by their Canons payable. and agreeing
 to them expressly herein is *Eusebius*, who, amongst
 other of their Mosaicall Laws, puts their paying of
 Tithes for one specially that was confined to the
 land of *Israel* and *Ierusalem*. for, first reciting that
 about eating the Tithes in the place, *which the*
Lord shall chuse to cause his name to dwell there,
 (which indeed is only spoken of the second Tithe of
 the first and second yeers) and ioyning it with the
 generall commandement of Tithing, and with the
 precepts of the Passeouer, of the feast of Weeks, and
 of Tabernacles. in which a certain *Place* by such an
 indefinit designment is also mentioned; he addes at
 length with reference to them all; *Aut vocatus autem est*

d. A. 11. 12.
 i. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

d. 11. 12. 13.
 & 14. 15.

He designs out a particular place, so often commanding them to meet there (every Tribe, every Household) how can it fit them or belong to them, that dwell but a little out of Iudæa? much lesse to the Nations of the whole world. But those feasts he speaks of, the Jews, at this day, obserue, although not accurately according to Moses his Lawes.

Tithe how paid, or due among the Gentiles.

C A P. III.

- I. Some Romans paid to some Deities, and sometimes only, a Tenth of spoiles; of proceede of merchandize; of their estates; but vsually also by vow, which bound the Heire or Executor.
- II. Festus is falsly cited for a generall custom of payment of Tithes among the Ancients.
- III. Examples of Tithes paid among the Græcians.
- IV. How the assertions of a generall vse of giuing Tithe to the Gods among the Græcians, are to be vnderstood; and why *δευτέρου*, that is, to Tithe, signifies also to Consecrate.
- V. A Tithe paid to Hercules of Tyre, and Sabis an Arabian Deitie, the same with Iupiter Sabazius.

I. **T**He custom of the Gentiles, vsually talkt of in offering a Tenth, is chiefly to be considered in the Romans and Græcians. The Romans

men had a kind of deuotion of giuing Tithes; but neither yearly, nor by compulsorie Law; as some falsely, but confidently, through ignorance in human literature, deliuer the welchier of them, diuers times vsed to Tithe their estates to *Hercules*; by spending the Tenth in sacrifices, gifts to his Temples, feasts in his Honor, and the like. it appears so, and to be no otherwise, by *Plutarchs* words, in his questioning the reason of it. *Aut n*, saies he, *ut Heculæ decimæ rerum suarum tributum facerent*; Why do many of the rich men tithes their substance to *Hercules*? and elsewhere he (as other Ancients) notes it as a speciall deuotion of some of the sonnes of Fortune. Neither is old *Cassius* otherwise to be vnderstood, where he deriues *Hercules* his Tenth from an innouation made by *Recaranus* in *Euanders* time. This *Recaranus*, he saies, first taught them to giue the Tenths of their fruits to *Hercules* (to whom he consecrated an Altar vnder the name of *INVENTORI PATRI*, after he had regained his heards that *Cacus* had stolne) rather then to the King as before the vse was; and then he addes, *inde videlicet tractum ut Herculi Decimam profanariis esset*; that is, thence came it to be a custom, that diuers did pay him a tithe. But, neither by their Law Ciuill or Pontificall, was this payment. Often it was as a thanksgiving after some increale of fortune, and often by vow beforehand, and for the most part, of increase of estate by mony gotten vpon sales, and of spoiles of warre. For such things that made accessions to their estates, they were sometime so thankfull. Whereat *Cicero* testifying, saies, that ne-

1 De naturâ De-
orum lib. 3.

not any man yowd *Hercules* a Tenth, in hope of in-
crease of his wit. Nay, *Hercules* himselfe *Decu-*
mam vovet unquam si sapiens factus fuisset. Of money
gotten vpon sale, an example is in the *Paradise*, that,
after reckoning up his good merchandize, saies, he
must sell it as deare as he can, that he may spend the
Tenth vpon *Hercules*.

1 *Plinius* in
Sicilia.

Hec venisse iam apud est quantum potest.

Vti Decumam partem Herculi polluceam.

1 In *Thucydide*.

m In *Apologias*
cap. 19.

1 *In* *Thucydide*
cap. 19.

n Anno ab *F. C.*
607.

whence the same Autor vses the name of *partem Her-*
culana, and *Tertullian*, speaking of the prodigali-
tie of the Gentils in their feasts, *Herculanarum de-*
cimarum, & *polluciarum* sumptus tabularum supputa-
bunt. For spoiles of waire, witness is in that dedi-
cation of *Lucius* *Mummius*, which got *Corinth*
and seeld it to the *Romans*, thus inscribed, and yet
remayning at *Rome*.

o *In* *Gruter*, in *In-*
scriptis, p. 96. & *In-*
scriptis in *Cavalis*,
vol. 20. lib. 14.
plura de hoc *Epi-*
grammate, qua
ad hoc posita,
hinc adnectere
incommodum
esset.

SANCO SEMIPATRI.

De decuma Victor tibi Lucius Mummius donum.

Moribus antiquis hoc pro vsura dare sese.

Visum animo so. perfecit sa pace rogans te.

Cogendo, dissoluendo vt scilicet facis.

Perficias Decumam vt faciat vererationis.

Propter hoc, atq; aliis donis, des cuncta rogans.

Their *Sancus* was *Hercules*, whom they vsually titled
Semo Sancus Deus Fidius, and the title of this tran-
scribed by some, is, *Sanco Fidio Semo Patri*, which
I rather thinke they mistake for *S. F. Semoni Patri*.
That *de decuma donum* was some speciall gift made
with

with the cost of the Tithe of the spoiles; and *decima* *vergarum* is there for the best of discretion and policie, as *decumanaria* amongst the Ancients were the best and choicest parts; and *Decumanum* the greatest and fairest; as *stictus decumanus*; *scuta decumana*; *decima vnda*; and the like: the great value that Hercules was by those vows honored with, is understood in that of Phaulsus: of *Tranio*.

Capitulum
symmachus in Epistola
Videtur Angel
Pelle. Mispill. cap. 12
et 13. et 14. et 15.
Plinius in Melpertis. cap. 4.

Tranio; is vel Herculi conterere quassum posset.

But neither did the Romans and their next Neighbours thus Tithe only to Heracles; but these their arbitrarie vows and thanksgivings were sometimes also to other Deities. The old Pelasgi that first planted themselves into Italy; gave their Tenth of game out of Sea-merchandise, to Apollo at Delphi; according to the Oracles direction, which at Dodona before had told them; that being mixt with the *aborigines*, they should send their Tithe to *Placibus*. This example of *Camillus*; is to every one known. he vowed the Tenth of the spoiles to Apollo; and most carefully took order, by advice from their most learned Priests; to performe it; and *Posthumus* Dictator so long before upon his happy victorie against the *Latins*; did the spoiles; asperit for the talents upon sacrifices and prayers; in honor of the gods; and erected a Temple; with what remained; to *Ceres*; *Bacchus*; and *Proserpina*. At other times also; on the generall worship of the gods; such a Tithe was spent. And other Deities; besides any

Plinius in Melpertis. cap. 4.

Plinius in Camillus. lib. 3.

Vide Dionysius Halicarnassensis.

And other Deities; besides any
Camillus it seems would the tenth of the spoiles; but
for ought it appears not to have been the tenth of the spoiles

of these, had sometimes Tenets of gain; as *Fortune*,
Mercurie, being the gods of Trauellers and Traders;
 men; and the Deities of the way, or *Dij Semisales*;
 as *Kius*, and others. so Noble *Sealiger* understands
 that which *Taurinus* speaks of his father *Casius* a
 Merchant; in an inscription to *Fortune*.

*Omnibus hic annis, votorum more suorum,
 Centenas adicit, numero crescente, coronas
 Fortune simulacra solens, & Apollinis aras,
 Arcanumque Vj*

Thus in *Italie* the custom was arbitrarily to pay and
 vow *Tithes* to their Deities, and continued in use til
 the later times of the Empire, as appears also in that
 Law receiued from *Kilian* by *Iustinian*. *Si Decimam
 quis bonorum vouit, decima non prius esse in bonis desi-
 nit, quam fuerit separata. Et si forte, qui decimam
 vouit, decesserit ante sepositionem, heres ipsius here-
 ditario nomine, decime obstrictus est. voti enim obliga-
 tionem ad heredem transire constat.* by this it is mani-
 fest that though the vow, or payment without vow
 were arbitrarie; yet, upon death, after vow made,
 the Heir or Executor of him that vowed was bound
 to pay; according as also in like vows of Houses,
 Land, or Chattels, to the honor of a Martyr, Pro-
 phet, or Angell, the Law was among old Christians.
 The view of these examples plainly disproues
 that assertion vsed by many out of *Festus*: *Decima
 quaeque veteres Dij suis offerebant.* no such matter,
 some did, and only sometimes, and of some things,
 and most vsually to some gods only. *Festus* himselfe
 was

Chapter 2

was too learned to have left such a monument of ignorance. No doubt is, but that which *Festus* had therein some larger note observed, according to a truth agreeing with what is before opened, was boldly contracted into this piece of untruth, by his Epitomator *Paulus Diaconus*. as in him, so in many other, most observable things have perished, both by the ignorance as well as negligence of insufficient Epitomators. and *Paulus* is well taxed for it by the divine *Scaliger*. *Vide*, saies he, *quantum iuris barbarus ille sibi sumserit in hoc loco mutilando* I indeed, most of that, which we call and receive as *Sextus Pompeius Festus*, is *Paulus* his only, abridged out of *Festus*, and those of the middle Ages cited it vnder the name of *Paulus* his Gloss. But when *Scaliger* there added, *Primum tam in Herculi hoc fecit*, he mends it not enough, for if it had been *Decimus quique Herculi vinctus offerendum*, it had been false, if understood as of Tithes vsed to be given by all or of all things, they consisted partly in vows and speciall thanksgiving, which were wholly arbitrarie, as Tenths or Fifteenths given by the Subject in Parliament. and had the offering of them been vsuall of yeerly increase, *Cato*, that in his *de Re Rustica* hath so fully the ceremonies of Sacrifices to be vsed by the husbandman in his Harrow, had neuer omitted it.

III. The *Gracians* (vnder which name, comprehend the *Asians* that were of Greek manners) often consecrated their Tithes to *Apollo*, with this inscription at *Delfi*, sacred to him, having this Verse,

That we may hang up Tithes and first Fruits to the
 honor of Phobus. And that famous Rhodopis sent
 so, Delphi as many spoils, for who in sacrifice, as the
 Tithe of that gains which she had made of her body
 came to. The Athenians, before their warre against
 the Lacedaemonians, vowed a Tenth to him, and the Lacedaemonians
 to exceed them that way. At Nauplia the Oracle
 having given is out, that rather by excess in vows
 then arms, the victorie should be gained. To the
 same Deitie the inhabitants of Siphnus gave yearly
 the Tith of their mints which they found in the
 Isles. And after a victorie against the Thebans
 filed by the Phocians, they made two statues of the
 Tithe of the spoils for him. Of Agis and Agesilaus
 the like dedication is remembered. Other like exam-
 ples are. Huncus was Apollo called in the
 you should say, *Ground with Tithes*. And in regard
 the offerings to him were either the Tenth, or given
 as in lieu of so much, they were called *Mercuries*
Mercuries if you should say it *Mercuries* in Tithes
 and the Tenth given by the sub-
 ject in Parliament, and had the offering of them been
 small or yearly increase. *Callimachus* in
 saies an offering to Delos, where Apollo was born
 and worshipped, that is, yearly first fruits in Tithes
 are sent thee. so I vnderstand it. But also to others
 sometimes ioynd with him, the like offerings were.
 As for *Pausanias* his story against *Mardonius*, the
 many of the Tenth of the spoyle was by consecra-
 tion divided, between *Iupiter Olympius*, *Nephtunus*
Isthmicus

e Herodot. lib. 2.

d Thucyd. hyst. 20

e Herodot. lib. 7

f Strabo lib. 10.

g Xenophon. Cyrob.

h Strabo lib. 7. & in vita

i Agesilaus.

k Callimachus in

l Herodot. lib. 8.

Iphicrates, and *Apollonides* were *Diad* of *Ephesus* participated with him. In other *Diad* without him; sometimes was the bond given to a *Supra* con whom also *Cyprus* was *Crinis* when he vowed all the goods of the *Citizens* if he could get the *City*; had special regard to the *Leuit* part, as competent to a *Deitie*; when to performe his vow, he gave yearly, for ten year together, the Tithes of all their estates, and left them the nine for their maintenance and vnderchardiner. And *Crisus* admonish by *Cyprus* would not have the goods of the *Lydians* taken sackt by his *Souldiers*; because necessarily they were to be tithed to *Jupiter*. Sometimes *Luna* hath this part, as in *Samos* the Tithes of certain *Merchants* goods was consecrated to her in a *Cup*. *Pallas* sometime hath it. *Dionysus* of the *Boeotians* and *Chalcidians* being taken prisoner by the *Athenians* and ransomed, their *Athenians* with the Tithes of the ransom, consecrated a *Chariot* to her. She also had among them the Tithes of all goods & confiscat, and that they call *Antiphon*. And a tradition was among them of *Priapus* a *Genius* of warre, that at *Luna*'s request taught *Mars* first to dance, and then made him a perfect *Souldier*; that *Luna* gave him for a perpetuall salary, all the Tithes of the spoiles that *Mars* should gaine in his victories. These examples among the *Grecians* are, for some kind of Tithes vowed, or otherwise arbitrarily, or by some locall custom paid to speciall *Deities*. But testimonies are not wanting among them,

1. *Strabo*, d. 10.
2. *Cyr.* 1.

1. *Strabo*, d. 10.
2. *Cyr.* 1.

1. *Strabo*, d. 10.

1. *Strabo*, d. 10.

1. *Strabo*, d. 10.

1. *Strabo*, d. 10.

1. *Strabo*, d. 10.

things to doe it, as it was a custome to consecrat statues, haire, vessels, and other more such like to Deities. yet were those customes no more generall or binding all or done by all, then the custome, in some Cities among vs, to offer at wedding-dayes. it was a custome or vse to doe so; that is, many men did so. The examples before taken out of story make that plaine. And in that sense only are these autors to be credited, touching the consecrating of Tithes to the gods in generall. For sometimes they were generally giuen to the gods, without any particular designed. *Suidas* relates an example thereof, among the *Lydians*. And when the *Athenians* had deuided *Lesbos* into 3000. parts, they consecrated 300. that is the Tenth, generally to the gods. and *Pisistratus* writing to *Solon* touching the tribute of a Tenth, sayes, that he tooke Tithes of euery one of the people, not so much for his owne vse, as ² *ἵνα δωσιαν ἀμφοτέρω*, as for publique sacrifice or the vse of the gods in generall. and the Tenth of what the Cooks in *Athens* kild for meat, was so due for a publique vse in honor of the gods, if my Autor deceiue not.

2 In *Mézos*.

γ *Thucydides lib.*
 γ. τῶν θεῶν
 ἵππὸς ἱερίων,
 hoc est, ἱερῶν
 τῶν ἀπὸ θεῶν,
 inquit Scholiastes
 vetus.

2 *Lam. de vit.*
Plin. lib. 2.

2 *Scholiast. in*
Aristoph.
inuit.

b *Iustin. lib. 18.*

c *Plin. lib. 12. 2. 34*

V. Here may bee added to the *Græcians* vse, the example of the *Carthaginians*, that sent the Tithe of their *Sicilian* spoiles to *Hercules* at *Tyre*. and you may remember that *Arabian* Law, wherein euery Merchant was bound to carry his Frankincense to *Sabota* (which the Learned take to bee *Saubatha* in *Ptolemie*; the chiefe Citie of *Arabia fœlix*) and there offer to their god *Sabis* the Tenth of it, which his Priests receiued. neither might any sale be

d Celsus ap. Orig.
nem lib 2. Arrian.
de gest. Alex. 2.
Strabon lib. 15.
Herodot. lib. 7.

made of it till that was paid. *Sabis* doubtlesse was their *Bacchus*, *Vranus*, *Jupiter*, or *Sabazius*; which are one. For the Deities of the *Arabians* were alwaies accounted but two: the god *Vranus* (known also by those other names) and the goddesse *Vranis* or *Venus*. it is neereſt truth therefore, that their *Sabis* is the ſame with *Sabazius*, which was firſt corrupted from *Zabaoth*, commonly occurring in holy Writ as an attribute to the only and true G O D. and as this name, ſo the payment of the Tenth very likely came to them from the uſe of it among the *Jews*, their Neighbours, as alſo to the *Carthaginians* from their Anceſtors the *Phœnicians*, that ſpake the ſame language with the *Jews* and converted moſt with them. Neither is it unlikely but that the ancient and moſt known examples of *Abraham*, gaue the firſt ground, both to them and to the *Europeans*, ſo ſometimes to diſpoſe the Tenth of their ſpoiles of warre to holy uſes. For 'tis no newes to haue the eldeſt of *Jewiſh* cuſtoms vſurpt (though according to time and place diuerſly varied) amongſt the *Gentiles*. What of later time is found among *Mahumedans* for the Tenth paid, muſt be referred to the *Mofaicall* Law, which they receiue as authentique, but keep it according to *Mahumeds* fancie, and the doctrine of his Canoniſts. You may remember here * *Eudemus* his relation of ſome kind of beaſts in *Africa* that alwaies deuided their prey into eleuen parts, but would eate only the Ten, leauing the Eleuenth as *ἀπὸ τοῦ πρώτου τῆς δεκάτης*, a kind of firſt Fruit or Tithes. So ſaies my Autor, and take his word alone; I am not his Suertie.

* Apud *Strabonem*
lib. 4. cap. 53.

In the first foure hundred years after
Christ.

CAP. IV.

I. No vse of Tithes occurs till about the end of this
foure hundred yeeres. Offerings and Monthly pay
for maintenance of the Church in the primitive times.

Diuisiones Mensurnæ. Sportulæ.
II. Payment of Tithes of Mines and Quarries to
Christian Emperors. The wealth of the Church
enuiued.

III. The opinion of Origen touching Tithes.

IV. Constitutions of those times, that mention them,
are of no credit.

I. **S**INCE our Sauour, the time being about M
DC. yeers, it will fall aptly enough so to
diuide that number quadripartitly, that we
may discouer the known Vse, Opinion, and Consti-
tutions, of euery foure hundred yeers, touching the
dutie or paiement of Tenths. the difference or lati-
tude of XX. yeers or some such number, either of
increase or want (as occasion shall serue) being al-
lowd, and the English Law and Vse (because there-
in we shall be most particular) being referd to the
last seuen Chapters. Till rowards the end of the first
foure hundred, no Paiement of them can be proued
to haue been in vse. Some Opinion is of their being
due, and Constitutions also; but such, as are of no
credit. For the first; 'tis best declared by shewing
the course of the Church-maintenance in that time.

So liberall, in the beginning of Christianity, was the devotion of the beleeuers, that their bountie, to the Euangelicall Priesthood, farre exceeded what the Tenth could haue been. For if you looke to the first of the *Apostles* times; then the vnitie ^f of heart among them, about *Ierusalem*, was such that all was in common and none wanted, and as many as were possessors of lands or houses, sold them and brought the price of the things that were sold and laid it downe at the *Apostles* feet, and it was distributed vnto euery man according as he had need. And the whole Church, both Lay and Clergie, then liud in common as the Monks did afterward about the end of the first foure hundred yeeres, as *S. Chrysostome* notes. *ἵνα* (saies he) *οἱ ἐν τοῖς μοναστηρίοις ζῶσι νῦν ὡς τότε τὸ ἐν κοινῇ*, that is, so they liue now in Monasteries, as then the beleeuers liud. But this kind of hauing all things in common, scarce at all continued. For we see, not long after in the Church of *Antiochia* (where Christianitie was first of all, by that name, profest) euery one of the Disciples ^h had a speciall abilitie or estate of his owne. So in *Galatia* and in *Corinth*, where *S. Paul* ordaind ⁱ that weekly offerings for the Saints should bee giuen by euery man as hee had thriued in his estate. By example of these, the course of monthly Offerings succeeded in the next ages. Those monthly Offerings giuen by deuout and able Christians, the Bishops or Officers appointed ^k in the Church, receiud; and carefully and charitably disposed them on Christian worshi^p, the maintenance of the Clergie, feeding, clothing, and burying their poore brethren,

^f *Act. cap. 4. 34.*

^g *Homil. 11. in Acta.*

^h *Act. Apostol. cap. 11. 39.*

ⁱ *Epist. 1. ad Co. 16. 2. vide Oikem. in Oper. 90. diurnum, cap. 107.*

^k *Vide Synod. Gangr. Cau. 66.*

thren, widowes, orphans, persons tyrannically condemned to the Mines, to Prison, or banisht by deportation into Isles. They were called *Stipes* (which is a word borrowed from the vse of the Heathens in their collections made for their Temples and Deities) neyther were they exacted by Canon or otherwise, but arbitrarily giuen; as by testimony of most learned *Tertullian*, that liued about C C. yeers after Christ, is apparant. *Neque pretio* (are his words) *vllares Dei constat. Etiam si quod arce genus est, non do oneraria summa quasi redemptæ religionis congregatur modicam unusquisq; Stipem mensuræ die vel cum velit, & si modo velit, & si modo possit, apponit. Nam nemo compellitur, sed sponte confert. Hæc quasi deposita pietatis sunt.* And then he shewes the imployment of them in those charitable vses. Some authoritie is, that about this time lands began also to bee giuen to the Church. If they were so; out of the profits of them and this kind of Offerings, was made a treasure; and out of that, which was increased so monthly, was a monthly pay giuen to the Priests and Ministers of the Gospell (as a salarie for their seruice) and that eyther by the hand or care of the Bishop, or of some Elders appointed as *Oeconomi* or Wardens. Those monthly payes they called *mensurne diuisiones*, as you may see in *S. Cyprian*, who wrote being Bishop of *Carthage*, about the yeere C C L. and, speaking familiarly of this vse, calls the Brethren that cast in their monthly offerings, *fratres sportulantes*, vnderstanding the offerings vnder the word *sportule*, which at first in *Rome* denoted a kind

1. *Apollonius cap.*
39. & *videlicet* & q.

in *Urban. 2. in E-*
pist. 2. 12. q. 1. & 10.
3ed & vide *Epist.*
Eccl. 1. 1. 1. 1. 1.
cap. 9. Edict. Maxi-
mini. & 1. 1. 1. 1.
3. Edict. Constanti-
& in lib. 2. de *vita*
Constantini. & 1. 1.

in *Cyprian. Epist.*
27. & 14. & vide
Epist. 36. editione
Panmeliana.

of running banquets distributed at great mens houses to such as visited for salutation, which being oftentimes also given in money (as you may remember out of *Martial*) the word came at length to signifie both those salaries, wages, or fees, which either Judges or Ministers of Courts of Iustice, receiue as due to their places, as also to denote the Oblations given to make a treasure for the salaries and maintenance of the Ministers of the Church in this primitive Age. and to this purpose was it also vs'd in later times. But because that passage of *S. Cyprian*, where he uses this phrase, well shews also the course of the maintenance of the Church in his time, take it here transcribed. but first know the drift of his Epistle to be a reprehension of *Geminus Faustinus* a Priest his being troubled with the care of a Wardship, whereas such, as take that dignitie vpon them, should (hee saies) be free from all secular troubles like the Levites, who were provided for in Tithes. *Qui* (as he writes) *operationibus diuinis insistebant, in nulla re auocarentur, nec cogitare aut agere secularia cogarentur.* and then hee addes, *Quae nunc ratio & forma in Clero tenetur, ut qui in Ecclesia Domini ad ordinationem Clericalem promouentur nullo modo ab administratione diuina auocentur sed in honore Sportulantium fratrum, tanquam Decimas ex fructibus accipientes, ab Altari & Sacrificijs non recedant, & die ac nocte coelestibus rebus & spiritualibus seruiant.* which plainly agrees with that course of monthly pay, made out of the Oblations brought into the Treasurie; which kind of meanes he compares to that

Papinian ff. de
Decurion L. 6 §. 1.
C. de Sportu-
la & vide Glos.
in Grat. in l. in
Epist. 1. 1. 1.

Council Chalced.
4. D. 451. in libell.
Samuelis & al.
contra Iban. & vi-
clesis Tom. 3. Con-
cil. fol. 131. cap. 31.
edit. Bini penul-
tima.

Epist. 66. edit.
Pammel.

that of the *Leuities*, as being proportionable. But hence also tis manifest, that no payment of Tithes was in *S. Cyrilians* time in vse, although some, too rashly, from this very place would inferre so much. those words *tamquam Decimas accipientes* (which continues the comparing of Ministers of the Gospel with the *Leuities*) plainly exclude them. And elsewhere also the same Father finding fault with a coldness of deuotion that then possessed many, in regard of what was in vse in the Apostles times, and seeing that the Oblations giuen were lesse then vsually before, expresses their neglect to the Church, with, *at nunc de patrimonio nec Decimas damus*. whence, as you may gather, that no vsuall payment was of them, so withall obserue in his expression, that the liberality formerly vsed had been such, that, in respect thereof, Tenth were a small part. vnderstand it as if he had said, *but now we giue not so much as any part worth speaking of*. Neither for ought appears in old monuments of credit, till neer the end of this first four hundred yeers, was any payment to the Church of any tenth part, as a Tenth, at all in vse.

¶ II. But some Laws of this time yet remaine, which shew that Tenth out of Mines and of Quarries were paid, both to the Emperor and to the Lord of the soile, as in the ancient state of Rome the Tenants of the Lands of the Empire paid for Rent the Tenth of their Corne, whence the Publicans that hired it (as the Customers doe here the Kings custome) were called *Decumani*. those Laws for the tenths of Mines and Quarries, were made

by

De uoluntate
elefia. 5. 21.

Capitulum. 1. 8.

C. de Metall.
lib. 1. 9. (unli. 2c
C. Theodof. lib. 20
19. 1. 10. & 11.

Ann. Marci.
lib. 27.
Tana. 6. edit. 82.
ulliana. pag. 897.
Tri à Xpi dyas.
Ker rās is-
sis & c.

Homil. in No-
m. cap. 18.

by *Gratian*, *Valentinian*, and *Theodosius*, Christian Emperors, about C C C. LXXX. and shew with all that they thought not then of any Tenth of such things, to be giuen otherwise, when indeed (howeuer *Cyprian* might before haue cause to complaine in *Afriue*) Christian bountie in Oblations (especially at *Rome*; and with proportion like enough in other Churches) so inrich the Clergie, that their wealthie happinesse thence was much wonderd at, and not a litle, from thence, enuied. For the then Bishop of *Rome* his wealth from Oblations chiefly, you may see *Marcellinus*. For other of the Clergie, a whole Sermon is in *S. Chrysostom* that liud at the end of this first C C C. yeers, against such as enuied the wealth of the Church, that grew only out of such Christian deuotion to the Priesthood.

III. As touching *Opinion* in that time; *Origen* a great and most learned Father, liuing about the yeer C C. hath a whole Homilie vpon the Text of first-Fruits in the Law, wherein while he teaches that some things are literally to be obserud, he well admonisheth that 'tis the part of a wise Interpreter to find out which are so, and which not. And then first he deliuers his iudgement, that this of first-Fruits is one to be obserud still according to the letter, and giues this reason; *Decet enim* (as the Latin is: the Greek I neither haue, nor could euer learn that it hath been publiht) *& utile est etiam Sacerdotibus Euangelij offerri primitias. Ita enim & Dominus diffusit, ut qui Euangelium annuntiant de Euangelio viuunt, & qui Altari deseruiunt de Altari participant;* and

and a litle after addes also for Tithes : *Et adhuc ut
 amplius hæc observanda etiam secundum literam ipsius
 Dei vocibus doceamur, addemus ad hæc : Dominus di-
 cit in Evangelijs ; Væ vobis Scribæ & Pharisei, hy-
 pocritæ, qui decimatis mentam, hoc est, Decimam
 datis mentæ & cymini & anethi & præteritis quæ
 maiora sunt legis. hypocritæ, hæc oportet fieri &
 illa non omitti. Vnde ergo diligentius quomodo sermo
 Domini vult fieri quidem omnimode quæ maiora sunt
 legis. non tamen omitti & hæc quæ secundum literam
 designantur. Quod si dicat, quod hæc ad Phariseos
 dicebat non ad Discipulos ; audi iterum ipsum dicen-
 tem ad Discipulos : Nisi abundaverit iustitia vestra
 plusquam Phariseorum & Scribarum, non intrabi-
 tis in regnum Cælorum. Quid ergo vult fieri à Pha-
 riseis multo magis & maiore cum abundantia vult à
 Discipulis impleri. And a litle after, Quomodo ergo
 abundat iustitia nostra plusquam Scribarum & Pha-
 riseorum, si illi de fructibus terre sue gustare non au-
 dent priusquam primitias Sacerdotibus offerant &
 Levitis Decime separantur, & ego nihil bonum faciens
 fructibus terre ista abutar, ut Sacerdos nesciat, Levi-
 tes ignoret, divinum Altare non sentiat. And in this
 forme, and vpon these reasons, he brings in that of
 Tents in the Gospell, to prone his purpose of first-
 Fruits. But in his conclusion vpon it, he leaues out
 Tents, and speaks only of first-Fruits ; thus. Hec
 diximus afferentes mandatum de primitijs frugum vel
 pecorum debere etiam secundum literam stare. Whæ
 we have transcribed shews both his opinion fully,
 and the ground of it, without which specially ob-*

serued, error soon follows oftentimes in collection from authorities. For Opinion of this time, thus much. More, I confesse, might be added out of some other great Fathers, as *S. Ambrose*, and *S. Augustine*. but because they fall so neer the end of our first age and continue into the second; they are omitted here and referd to the beginning of the next foure hundred yeers.

IV. For *Constitutions* of the Church; if you could beleue those supposed to be made by the Apostles, and to be collected by Pope *Clement* the first you might be sure both of payment in the Apostles times, as also of an expresse opinion as ancient for the right of Tenth. there you read: *Que secundum Dei mandatum tribuuntur, Decimas dico & primitias, insumat Episcopus ut homo Dei.* and the right is there largely grounded vpon the Leuiticall commandement. But no man that willingly and most grossly deceiues not himselfe, can beleue that this *Constitution* or diuers others there, are of any time neer the age of the Apostles, but many hundred yeers after. The litle worth, and lesse truth, of the whole Volume is enough discouerd by diuers of the learned. and it was long since branded for a counterfeit in an *Oecumenicall* Council, when doubtlesse, it was not yet neither so stufft with *Canons* of later birth, as since it hath been: neither are there greater arguments against it as now it is, then some passages of fact that obuiously occurre in it, among which this may cleerly goe for one. Had it been the Apostles ordinance or the vse of the Church in the

a *Clement. in Constitution. Apostol. lib. 1. Cap. 25.*

b *Synod. 6. in Trull. 16. circa a. 4. 690. Can. 2.*

Primitive times, *Origen*, *Tertullian* and *Cyprian* (having such occasion to mention it) could not have been so silent of it. And is it likely that all the old Councils, from thence till near D C. yeeres after Christ (which, being authentique beyond exception, have speciall Canons for the lands and goods possess by the Church, the Offerings, Revenues, and such more) could have omitted the name of Tenth, if either such use or Apostolicall Law had preceded? They talke of *unusuarius ususque*, the goods of the Church, *ad propositas necessitates* or Offerings of fruits; but have not a word any where of the Tenth part. And in those counterfeit Canons also which some too credulously (and those also that wholly reiect the eight Books of *Elementines*) received as made by the Apostles, one is indeed of first Fruits (although, touching them by that name, certainly no Law was made vnder the Apostles) but no word of Tenth. Of a like credit, its to be feared, is that which is attributed to a fourth Councell of Rome, held about the year C C C. L X X X. by Pope *Damasus*. indeed (vpon Cardinall *Baronius* his credit) in the *Vatican* the Legend of this Pope, which was vs'd to be read in the Church, is extant; and, with some miracles, are mixt in it certain decrees supposed his, and made in he knows not what Councell at Rome. of which one is, *Vi Decime at quo primitie a fidelibus darentur; & qui de re decarent anathemate ferirentur*, as he relates it. But those decrees, being taken out of the Legend of him, neither ever were receivd as Canonically in the Church, nor hath

c. Canon. Apost.
cap. 2. & 4.

d. *Thom. Aquin.*
2^a 2^a 2^a 2^a
pag. 109. & 114.
pag. 117. c. 11.
Platinius.

the eldest Cede of the Church of Rome, or *Fulgen-
tius, Cresconius, Isidore, Burchard, Ivo, or Gratian,*
mention of any of them. Not because what was ta-
ken to be truly his, was altogether wanting; for the
Canons of one Councell of Rome vnder him, his E-
pistles; and some Decrees are and haue been from
ancient time, publique and dispersed in som of those
Compilers; and one especially they haue of his
time, which being made only for the disposition of
such things as were given to the Church, speaks on-
ly of *Oblations*, but this of Tithes or any of the rest
ioynd with it touching *Vsurers, Wirches*, and other
more (which *Barenius* only and first publiht to the
world, out of the Ms.) none of them once remem-
ber. Neither before *Binus* his edition had any Vo-
lume of the Councels receiud into them a memorie
of any such Decrees vnder this *Damasus*, or any
Councell of his of that number. Those kind of Acts
and Legends of Popes and others, are indeed vsual-
ly filled with such falshoods, as being bred in the
middle ages among idle Monks, not only grow anci-
ent now, but are receiud amongst vs with such reue-
rence, that the antiquitie which the Copies haue
gained out of later time, is mistook for a Character
of truth in them for the times to which they were
first, by fiction or bold interpolation, referd. In
summe, no example for the Synods of succeeding
ages, no antiquitie for the Compilers of the Ca-
non, had been of equall reuerence to this of a Pope,
and done at Rome. neither had they omitted euery
of those Decrees, had they been truly his. Confid-
dently

e. C. 10. q. 1. r. 15.
hanc consuetudi-
nem,

hanc consuetudi-
nem, q. 1. r. 15.
hanc consuetudi-
nem, q. 1. r. 15.

dently conclude, they are supposititious. yet remember too that some colour is for the truth of such a Constitution, in regard that about that time the first memorie is of Tithes by that name paid in the primitive Church; as in the next part of this division shall be declared. And were that Epistle not counterfaine, which is attributed to S. Hierom, as written to this Pope vpon that question: *Virum vsat decimarum & oblationum secularibus peruenire possit*, it might be good cause to maintain the truth of this Decree of his for Tithes. But plainly that Epistle is alike fained; neither takes it of him or of any time neer that age; nor hath it been euer receiued among that most learned Fathers works.

f. c. 16. p. 1. a. 69.
quoniam, et gentes
na D. Hieronymus
meminit etiam
decent, 3. in ex
de his que sunt a
Prophetis, 7. cum
Apollonia.

From about the year **CCCC.** till

DCCC.

CAP. V.

- I. Tithes were now paid in diuers places, to Abbots, to the Poore, to the Clergie.
- II. Some Consecrations were then made in perpetuall right, at the pleasure of the Owner.
- III. That storie of Charles Martell his taking away Tithes, and making them feodall, cannot be iustified.
- IV. The opinions of S. Ambrose, S. Augustine, S. Hierom, and S. Chrysostom. the first two teach, the Tenth due by Gods Law; the other two perswade only that a lesse part should not be offered.
- V. Of Canons, for the payment of Tithes, that are attributed to this Age.

VI. No Canon or other Law, was yet generally received to compell any payment of Tithes, although among the Offerings of devout Christians, gifts of that quantitie, were received as due by the Doctrine then in vse, in some places only.

But the beginning of the next, or rather some yeers before the end of the first part of this diuision, and afterward, Tents were paid, or, for holy vses offerd (as the phrase was) in diuers places, in Offerings of that quantitie; and some testimonie is of Churches also endowd with the perpetuall right of them in the later halfe of this four hundred yeers. Great Opinion was now of their being due. And some Canons and Prouinciall Constitutions, attributed to this time, ordain a payment of them. But not aboue one of these (and that's only Prouinciall) is of any credit.

I. That they were offerd vnder the name of Tents in part of *Italie*, may be collected out of *S. Ambrose* who was Bishop of *Millan* before, and after the yeer CCC. XC. And the like for the Diocesse of *Hippo* may be supposed out of *S. Augustines* vehement Sermon for the payment of them. The words of both these Fathers (which in relating their opinions are anon transcribed) may enough proue, that some did in those times offer them. And it may be, *S. Hierome* pointed at the receiuing of Tithes then so offerd, in those words of his, spoken in the person of a Clergie man. *Si ego pars Domini sum & funiculus hereditatis eius, nec accipio partem inter ceteras*

In Epist. ad Ne-
potianum de vita
Clericorum.

terat tribus sed quasi Leuita & Sacerdos vinctus de Decimis, & Altari seruientis Altari oblatione sustentor, habens victum & vestitionem; his contentus ero & nudam crucem nudus sequar. But 'tis no necessitie to vnderstand him so. it may well be, that de Decimis there is but a continuance of the comparison made by quasi Leuita; as if he had said, But liue like a Leuite that liued of the Tithes, and seruing at the Altar, am maintained by the offerings at the Altar &c. what in Gratian is falsely attributed to him, is before remembered. In Ægypt also some holy Abbots had Tithes of all fruits offered them about the beginning of this age. Cessatim Decimas vel primitias frugum suarum memorato seni (to Abbot Iohn) de suis substantiis offerebant, saies Casian, the Hermit that liued about the yeere CCCO. XXX. and the Abbot receiues the offering with this kind acknowledgement; Deuotionem huius oblationis (cuius dispensatio mihi credita est) grater amplexor, quia fideliter primitias vestras ad Decimas indigentium vsibus suarum, velut sacrificium Domino bonis suauitatis offertis. Where it appears the Abbot receiued them as a Treasurer for the poor. And about the yeere CCCO. LXX. Christians also in Ramonia, by example of S. Severinus bountie, gaue the Tenth of their frutes to the poor. Deuotissime (saies my autor that then liued also) frugum suarum Decimas pauperibus impendebant; quod mandatum, licet cunctis ex lege notissimum sit, tamen quasi ex ore Angeli presentis gratia deuotione seruabant. And a little after, he relates that the Inhabitants of Lauriacum (which some take for Lorch

Lorch in *Austria*) being often admonisht by *S. Severin*, to pay the Tenth of their fruits to the poor, had notwithstanding omitted it; whereupon, their Corne being blasted, they humbly come vnto him, *pœnas sue contumacie confitentes*, acknowledging their losse as a reward of their fault. And the Saint answers them; *Si Decimas obtulissetis pauperibus, non solum æterna mercede frueremini, verum etiam commodis posses abundare presentibus*. whence is seen both the receiue use of offering them in that place, as also the opinion of *Seuerin*. And in a Prouinciall Council at *Mascœn*, held in the yeer D. LXXXVI. that is, the XXIII. of King *Guntberam*, by all the Bishops subiect to his gouernment in *France*, the payment of Tithes, into the hands of the Ministers of the Church, is spoken of, as of good antiquitie at that time; and grounded vpon the *Mosaicall* Laws, which they call there *diuinas*; and adde; *quas leges Christianorum congeries longis temporibus custodiuit intemeratas*. that long time they speak of, might haue had perhaps beginning from the doctrine of those two great Fathers, *S. Ambrose*, and *S. Augustine*, about the yeer CCC. whereof, more presently. But obserue also that, *Leo* the Great (he was Pope from CCC. XL. to CCC. LX.) hath diuers Sermons, yet remayning, *De ieiunio Decimum mensis & eleemosynis*, wherein he is very earnest and large, in stirring vp every mans deuotion, to offer, to his Parish Church, part of his receiue fruits, but, speaks not a word of any certain quantitie. The like may be noted in some Homilies of *S. Chrysostom*, touch-

Marston, Cant. l.
cap. 31

in Vide com. de
epist. ad Philipp. 1.
de Sermonibus 101.
en eos. qui Cleri-
corum opulen-
tiam intulerunt.
Tom. 4. Edit. Je-
niliana.

touching the Churches maintenance, in which you might wonder how Tithes were omitted, if either deuotion or doctrine had neer the beginning of these CCCC. yeeres made payment of them (especially in the more Eastern parts) of any common use. For the later part of those yeeres, see towards the end of this Chapter.

I. But beside the offering of Tithes yearly (as was done, by the deuoutest sort, sometimes to the Ministers of the Sacraments, sometimes to Abbots, and the like) a perpetuall right also of them was consecrated to some Churches, by grant or assignement, out of such or such land, at the owners pleasure, and that long before the end of this four hundred yeeres. These speciall indowments may be collected from a Canon of a Councell of Arles, held in the year DCCC. XII. which thus speaks: *¶ In Ecclesia antiquitus censuuntur, nec Decimis, nec ulla possessione priuentur.* and other Prouincials of that time, and Laws of Charlemain agree with it, as that of his thus speaking: *¶ In Ecclesia antiquitus censuuntur, nec Decimis, nec alijs possessoribus priuentur, ut vt nouis pratorijs tribuantur.* These cannot well be vnderstood, vnlesse you interpret them to mean Churches anciently endowd with Tithes. And what was then about the year DCCC. said to be anciently endowd, must be referred back into some part of the time we now speake of. Neither are the monuments of that time without example of such endowments. It is reported that Pipin about the year DCC. augmented the Tithes of all that lay

manuscript
p. 446
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manuscript
p. 446
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manuscript
p. 446
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vide c. 10. p. 2.
446. 43. 6. 14

o. An. p. 151
p. 446
vide c. 10. p. 2.
446. 43. 6. 14

p. 4. and Malanum
in SS. Belgii in 12.
Olib.

q. Chronicon. Ca-
merac. & Airob.
lib. 1. c. 85.

r. Bonifat. Mogunt.
Epist. 151. Alii
sunt eiusmodi Do-
nationes Pipini Re-
gis & aliorum in
Regesto Ms. Bi-
blioth. Ultraiecten-
sis, quod servatur
in Bibliotheca
Catholica. & vide
proximum caput
de hac re.

10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

between Oure and Lesbe two Rivers of Ardoinne;
to a church consecrated to the honor of S. Monon.
So I take that in S. Monon's life. *Beato viro ob-
tulit Christianitatis in aetate Pipinus Rex regaliter
Decimas obtulit, quas habet inter Letram & Pream.*
So about the year DC. LXXX. *Decimacula in
Rodulfi Curte*, that is, the right of a Tithe of small
value, in a place calld *Rodulfi Court*, was conse-
crated to the Church of *Arran*. And in a confirma-
tion by King *Pipin* of the foundation of the Ab-
bey of *Fulda* (which was made in DCC. XLII.)
consecrations of Tithes to the same Abbey, either
alreadie made or thereafter to be made, are spec-
ially confirmed. whatsoever it had or thereafter
should haue in *donis, oblationibus, Decimisq; fide-
lium, absque ullius persone contradictione firmitate
perpetua fruatur*, are the words. But these kinds of
grants it seems were not yet in much vse. and what
was of them, I ghesse, might haue beginning not
long before DCC. yeers from our Sauour. For if
they had been known much before, the precedent
of them could hardly haue been omitted by *Mar-
culphus*, who liud vnder King *Clouis* the second a-
bout the year DC. LX. and collected carefully the
Formule or precedents of all kinds of Deeds, Con-
ueyances, and Grants, that were practiced in his
time, amongst which he hath many by the name of
Cessiones and *Donationes*, wherein lands and other
profits were given to this or that Church, but ne-
uer mentions any one for the gift of Tenth.

III. If the common tale of *Charles Martell* his
taking

those ancient, that largely speak of Lay men's oppression by defacing whole Monasteries and Bishopricks in the times that next succeeded. Neither is it clear that in *Eucherius* his life *Martell* was dead: for it is observed and taught by that great and most learned Cardinall *Baronius* that he lived at least ten years after *Eucherius*. How then could *Eucherius* cause his Tomb to be searched and there find a Serpent? That's enough, & truth too that Banishment brands him withall for his tyrannical spoiling the Church of her other possessions. *Longa consuetudo verenda moris consumitur est*, the rest is only out of the Legend of *Eucherius* his life, which (as other things for the most part of that kind) is copfull of falsehoods to gain to it selfe any credit. And some late Canonists that out of his tyrannie against the Church, interpret their *Decima infudate*, or *feudall Taxes*, are alike in no small error, as in the next Age shall be manifested. For neither was the course then used in taking the Church revenues for militarie maintenance, to give them in fee to any Lay man, but leases for life were made by Church men, to such as the Princes appointed, of great part of their possessions, whereupon certain small Rents (according to a proportion ordaind by the State) were reserved. Those leases were sometimes vpon the Princes request renewed, but vpon death of the Lessee, the estate and possession reverted to the Church. all which appears plainly in a Council held in the year DCC. XLII. vnder Prince *Carlo-man* soane to *Martell*; where

in 12. ad. 1. Solentur
in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.

in Tom 9 pag. 111.
& 138. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
banc aliq. aliter, &
qui curiosus hic esse
velis, prout ea qua
satis oluta sunt, ad
vni. Adreualdian.
vni. vni. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
de miraculis S.
Benedicti, c. 14.

in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.

in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
in 12. ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.

in Inter Ep. S.
Boni acit post. 78.
vide, si placet, E.
pist. 132 & Zache
ria PP. ad eum B.
pist. 142.

Dei est; & inde Decimas inquit vnde vniu; de
militia; de negotio; & de artificio reddo Decimas
aliquid enim pro terra dependimus; aliquid pro usura vi-
ta pensamus. And then vring more Texts out of
the old Testament touching Tithes and first fruits;
and telling them; that the neglect of payment is
the cause of sterilitie and blasting; Hec est (he saith)
Domini iustissima consuetudo; ut si tuilli Decimam
non dederis; tu ad Decimam reuerteris. And after-
ward with much earnestnesse; Decimas ex debito
requiruntur; & qui eas dare noluerint; res alienas in-
uasit. & quanti pauperes in loco vbi ipse habitat;
illo Decimas non dante; fame mortui fuerint; tantorum
homicidiorum reus ante tribunal aeterni iudicis appa-
rebit; quia a Domino pauperibus delegatum suis vbi-
bus reseruauit. Qui ergo sibi aut premium compa-
rare; aut peccatorum desiderat indulgentiam promo-
ueri; reddat Decimam. These two great Bishops ag-
ree; and from the Law giuen to the Israelites;
take their whole doctrine. S. Hierome is by some
vsed for an autor to the same purpose; and that
from his Commentarie to the text of Malaby;
which (after he hath opened the words of the Pro-
phet, being only about the neglect of payment of
Tithes and first fruits; about the neglect of pay-
ment only, not the right of them) are these; Quod
de Decimis primitiis que dicimus; que olim dabantur
a populo Sacerdotibus ac Levitis; in Ecclesia quoque
populis intelligere; quibus preceptum est non solum
Decimas dare & primitias; sed & vendere omnia
que habent; & dare pauperibus; & sequi Dominum

1001

Salua-

those primitive Ages) was held by most Doctors
 & of the time, as vniust as Vsurie. and indeed,
 where it was iust, there no part of the gaine or
 spoiles was to be giuen to the Priests, by the do-
 ctrine of some^b Rabbins, that affirm it as expressely
 taught^a within a Text of *Moser*. But his excepti-
 on of Vsurie agrees with the Canonists of late
 times, that will not haue Tithe paid of vniust gain,
 no more then ^k *the hire of a Whore, or the price of a*
Dog, was to be brought into the Temple. what is
 there called the *price* of a Dog, is by *Iosephus* taken
 for monie giuen for the lone of a Dog to breed
 withall. You may adde to the opinions of this
 time that of ^m *S. Gregorie*, where he admonishes
 the hallowing of Lent, consisting of six weeks, out
 of which, the Sundayes being taken, XXXVI.
 dayes remain for the Tenth part of the yeer; fracti-
 ons of dayes omitted, this Tenth of time he would
 haue vs giue to God, *vt in lege iubemur* (as his
 words are) *Domino Decimam rerum dare.*

V. Some Canons, both Pontificiall and Syno-
 dall, made for the right and paiment of Tithes, are
 attributed to the ages that fall about the middle of
 this time. But I haue not obserud aboue one, that
 is of any credit, as referd hither; neither was that
 euer receiud into the bodie or any old Code of the
 Canons. That one is Prouinciall, and made in the
 yeer D. LXXXVI. in the Councell of ⁿ *Mascon*
 (a Bishopricke in the Diocesse of *Lions*) where all
 the Bishops of King *Guntherams* Kingdom being
 present, speak of reforming Ecclesiasticall customs

^g Videtur La-
 tina lib. de vici-
 cibus cap. 18. &
 Tertullianus de
 Carnal. Milia.

^h *Abrah. Ben-
 jamin* cap. 301.
ⁱ *Dent.* cap. 18. 2.

^k *Ibid.* cap. 13. 18.

^j *Origenes* Trid. lib. 4. cap. 7.

^m *Hamil. de E-
 mang. & disp. 5. de
 Coniurat. a. 16.*

ⁿ *Mascon*
 cap. 9.

according to an ancient example, and then begin with *Leges Diuinae, consulentes Sacerdotibus ac Ministris Ecclesiarum, pro hereditaria portione omni populo praeceperunt Decimas fructuum suorum locis sacris praestare, ut nullo labore impediti per res illegitimas, spiritualibus possint vacare Ministerijs; quas leges Christianorum congeries longis temporibus custodiuit intemeratas. Vnde statuimus ut Decimas Ecclesiasticas omnis populus inferat, quibus Sacerdotes aut in pauperum usum aut in captiuorum redemptionem erogatis, suis orationibus pacem populo ac salutem impetrent.* Here is no small testimonie as well of ancient Practice in paying of them, as of great Opinion for their being due. But although the whole Councell hath to this day remaind with the subscriptions of the Bishops to it, yet (whateuer the cause was) not so much as any Canon of it is found mentioned, as of receiued authoritie in any of the more ancient Compilers of Synodall decrees; notwithstanding, that the fullest of them, I meane *Isidore*, liud long after this Councell held, and hath some other Synods of the Continent of *France*, as of *Orleans*, of *Arles*, of *Agatha*. But this he mentions not. The first that published it, was *Frier Crab*, in his Edition of the Councils vnder *Charles* the first. Yet also in some that collected the Canons since *Isidore*, Decrees of elder time then that is, are to this purpose spoken of; as you may see in *Iuo* ^p at the end of a Decrerall of *Gelasius* that was Pope in the yeer CCCC. XCII. where these words are annexed, *Decimas iusto ordine,*

non

o Tom. 2. Embr.
har. fol. 90.

p Decret. part. 3.
cap. 115.

*non tantum nobis, sed maioribus nostris visum est, ple-
bibus tantum ubi sacrosancta dantur baptismata de-
beri.* This stands continued with the rest of *Gela-
sius*, in the print. But in an old and very fair Copie
neer as ancient as *Iuo*, remaining in the Librarie at
Pauls, these words begin with a coloured capitall,
as a severall Paragraph; and indeed are not *Gela-
sius* his, but Pope *Leo's* the fourth, who lived a-
boue CCC. L. yeers after. that appears plainly
out of the Epistle 9 of *Gelasius* (whereto they are
annext) which *Gratian* hath in all, sauing this, ac-
cording to *Iuo*, yet cites this passage in another
place * by it selfe, out of that *Leo*, from whom also
tis likewise taken by *Anselm* and *Gregorius Pres-
byter*, who haue in their collections the rest of *Ge-
lasius* his Epistle according to *Iuo*, as it is noted to
the Text publisht by command of *Gregory* the
thirteenth. And in those Decrees of *Gelasius*
that are extant touching the Church-treasurie, or
reuenue, no mention is of other then of *redditus
Ecclesie & oblationes fidelium*. A like falshood is
committed by them * that attribute a Provinceall
Constitution touching the distribution of Tithes
amongst the Bishops and inferior Ministers to the
first Councell of *Orleans*, held in the yeer D. VII.
and that by finding som words to this purpose ad-
ded to a Canon which in the printed *Iuo* * hath a
marginall reference to some Councell of *Orleans*.
It is most certain that the first Council of *Orleans*,
* hath no word of Tithes in it, but speaks of the
distribution only of such things as in *Altario obla-*

g C. 13. p. 2. & 25

f C. 16. p. 1. & 45

f Decret. Gelasii,
cap. 10.t Ex Bando in tom.
2. Concil. alij, qui
de hac re agunt.u Decret. lib. 2.
cap. 202.x Concil. Aurel. 1.
cap. 9. 10. & 11.

y C. 109. 1 & 7.
de his.

x Concil. Aurel. 1.
cap. 5. & Aurel. 5.
cap. 15.

a Aurel. 1. cap. 11.

b Toledo. 2. cap. 6.

c Synod. Rom. sub
Syluestro Papa
cap. 4.

d Decret. lib. 3.
cap. 136.

tione fidelium conferuntur, and possessions of other like kind of Church-lands. and according to that, *Burchard* and *Gratian* cite it; who have also those words that *Iuo* there hath, excepting only that of Tithes. And some other Prouincials of the same place and age, to the same purpose, speake afterward of *oblaciones* & *facultates*, but not a word of Tithes. All which shews plainly that no such matter was euer in the first Councell of *Orleans*. The truth is also that *Iuo* himself cites it not out of any Councell of *Orleans*, but from, I know not what Councell of *Toledo*, as his Ms. copie is, and as it is truly publisht in the printed book. all that directs to the Councell of *Orleans* there, being only the marginall note of *du Molin* a Canonist of *Louain* that set it forth. But neither any of *Orleans* or *Toledo* hath it all as he relates it. The truth is; that Canon of his is made vp out of two Councels indeed, the first ^a of *Orleans*, and the ninth of ^b *Toledo*, and agrees well with both, sauing for so much as is expressly spoken of Tithes. That which in those two had been ordaind for Offerings and other reuenues of the Church, he not vnfitly applies to Tithes, being a more known part of that reuenue in his time; and thither draws also an old Councell of ^c *Rome* as if it had spoken expressly of them, & writes all in no other syllables then ^d *Burchard* had before deliuered with a like title of *ex Concilio Toletano*. But this excuses not those which make the words of such a collection, out of two or three old Councels, applied to a la-

ter time, to go for a Canon of any one of them. Many such are occurring in *Burchard* and *Iuo* especially, and some in *Gratian*, which are noted upon their credits, and, in some editions, placed in the times to which they attribute them, *licet forsitan falso tali sint Pontifici, vel certe tali Concilio per scriptorum incuriam adscripti*, as *Erier* & *Crab* well admonishes. A like falshood is in attributing, out of the same *Iuo*, an expresse Canon for the payment of first Fruits and Tenths, to the Prouinciall Synod of *Siull*, held in the year D. CX. in these words. *Omines primitias & Decimas tam de pecoribus quam de frugibus, diues simul & pauper Ecclesijs suis recte offerant.* and a litle after: *Omnis rusticus & artifex quisq; de negotio iustam Decimationem faciat.* and then, *Si quis autem hec omnia non Decimauerit, prædo Dei est, & fur, & latro, & maledicta quæ intulit Dominus (scilicet) Cain non recte diuidenti congeruntur.* There is litle reason to doubt, but that the reference of that Canon in him, to that Councell of *Siull* is false. The Councell of that yeer and place is extant, whole in diuers editions, as it was certified by eight Bishops which were at it; and in thar no taste is of any such matter. The old Ms. copie of *Iuo*, of or very neer his time, in the Librarie of *Pauls*, hath it *ex Concilio Spanensi*, the printed book being *ex Concilio Hispanensi*; what *Spanensi* is, I know not, if it were *Spalensi*, it were the same with *Hispalensi*, for which *Spalensi* is alwaies in *Isidores* Councels, as *Spania* is sometimes & anciently for *Hispania*. what euer he meant by it,

e in Prolegom. ad
Tom. 1. Concil.

f Petr. 3. 174.
Gerslæus apud Bl.
nium in Tom. 2.
Concil. ex eo alij.

§ Palladius hisp.
Lausana in Melano
& in Concilio Sar.
densi subscribit
Ofm ab Spania &
Costm ab Spavin.

In Anfrissu Cap-
itulari lib. 3. cap. 91
quod ipsum etiam
habet Ino part. 16.
cap. 362.

clearly the whole Canon is of much later time; the first words of it also being nothing but the syllables of one of *Charlemains* Laws; that was not made till DCC. LXXX. yeers from Christ. that is, *Vnicuique Ecclesie mansus integer absque vlllo seruitio attribuatur.* where *Mansus* is for a Farme or dwelling place, in the same sense as at this day *Manse* is vsed in the Laws of *Scotland*. Some others like these occurring are mistaken. and you may obserue that *Gratian* more warily abstained from vsing such Canons mistitled; among which also, from these. But the lesse falsehood is to be imputed to *Ino*, in regard that *Burchard* before him had almost all his syllables; from whom hee transcribed. yet that excuses not his negligence committed in not carefully examining his autor, which often causes grosse impostures, sometimes proceeding from malice, sometimes from ignorance, to be received as perfit truth; especially by those that cite, without more regard, *Provinciall Synods* absolutely there mentioned for the first of that name, when indeed they are often of farre later time. Slothful Readers are soon so deceived. But among the known and certain monuments of truth, till about the end of this CCCC. yeers, no Law Pontificiall, or Synodall (saying that of *Mascon*) determines, or commands any thing concerning Tents; although very many are which speaking purposely and largely of Church Reuenues, Oblations, and such like, could not haue been silent of them, if that quantitie had been then establisht for

a cer-

a certain dutie. You may see i enough in those to which the margin refers you; all made in this part of our diuision; none vsing other words (to this purpose) then *facultates, pradia, redditus, censuras, oblationes, vota fidelium, res Ecclesie delegate, or collatae*, and the like, as the phrases are in the other first CCCC. yeers. some of which kind yet the Canonists and others, in Prouinciall Synods, haue in the later ages, compiling their Decrees, made to serue as if they had expressly named Tithes. as you may see in that example rememberd before out of *Iuo*, and *Burchard*; in that of the Councell of *Gangra* in C. 16. q. 1. c. 57. in *Canonibus*; in that of the 29. Chapter of *Gelasius* his Decree in the Councell of *Tribur* held DCCC. XC. cap. 13; in that of the first *Oecumenicall* Councell of *Chalcedon* cap. 17. in c. 14. of the same Synod of *Tribur*; and in that of the ninth Councell of *Toledo* in an old Councell of *Cologne*. hee that reads those old Canons only, as they are so applied, in late auctoritie, to Tithes, might perhaps soone think that at first they were made specially and by name for them. The matter is plainly otherwise. what was ordaind in them about Oblations, is out of them in later times (Tithes and Oblations being then supposed of equall right) expressly extended also to Tithes. the word Oblations, as you see in those times, being vsuall for Tithes also when they were giuen; and *offerre Decimas* was the common phrase; for to giue Tithes. About the end of these yeers in a Prouinciall Synod held at *Friuli* in

i Synod. *Apach.*
4. & 7. & 18. Synod. *Rom.* 4. sub
Symmachus PP. 5. 4.
& 6. edict. *Lumen*.
& *Anthonis* C. de
Sacros. *Eccles.* L. 14
titulus. C. 2. 12.
q. 2. 2. 3. *Novell.* 130
& 131. Conc. *Pa.*
vis. 2. cap. 1. *Thom.*
nos. 2. cap. 26. *Dre-*
sacros. 2. cap. 2.
Leg. *Wiffridum*
lib. 5. & 6.

k *Burchard* lib. 3.
cap. 135. & *Iuo*
part. 3. cap. 301.

in D. C. C. X C I. vnder *Paulinus* Patriarch of *Aquilegia*, the words are; *De Decimis vero vel primitiis (saluis scilicet allegoricarum rerum mysticis Sacramentis) nihil melius puto dicere quam quod scriptum est in Malachia Propheta, dicente Domino; inferte omnem Decimam in horreum meum &c.* and vpon that place, the supposition of the dutie being grounded, a Commination is added; *Quis non timeat vel contremiscat illam maledictionem quam minatur nolentibus offerre?* The opinion of the Synod is here plainly seen, and it is rather a declaration by Doctrine, then a constitution by Precept.

V I. But howeuer either this of *Friuli*, or that before cited of *Mascon*, had their Prouinciall authoritie, no Canon as yet was receiued in the Church generally, as a binding Law, for payment of any certain quantitie; which not only appears in that we find none such now remaining, but also is confirmed by the testimonie of a great and learned French Bishop (in whose Prouince also *Mascon* was) that could not be ignorant of the receiued Law of his time. Hee liud and wrote very neere the end of this first foure hundred yeers (I thinke, in the very beginning of the next.) And, in a Treatise about the dispensation of Church reuenues, expressely denies; that before his time any Synod or generall doctrine of the Church had determined or ordaind any thing touching the quantitie that should be giuen, either for maintenance or building of Churches. Because his words are speciall
auto-

autoritie also against these counterfeit titles of
 Canons before spoken of, they shall have place
 here. *Iam verò* (saith he) *de Donandis rebus &*
ordinandis Ecclesijs nihil unquam in Synodis consti-
tutum est, nihil à sanctis patribus publicè predica-
tum. Nulla enim compulsi necessitas feruente ubique
religiosa deuotione & amore illustrandi Ecclesias ul-
tri æstuante &c. This Autor is *Agobard* Bishop of
Lions (very learned, and of great iudgement) and
 had not so confidently denied what you see hee
 doth, if any Decree, Canon, or Councell generally
 receiued, had before his time commanded the pay-
 ment or offering of any certain part. How the au-
 thoritie of that Councell of *Mascon* stands with his
 meaning, I well conceiue not. But cleerly, hee
 speaks truth, in regard of what was generally re-
 ceiued. For neither in the *Codex Ecclesie vniuersa-*
lis, or the *Codex Ecclesie Romanae*, or *Africanae*,
Fulgentius Ferrandus, *Cresconius*, or *Isidore*s col-
 lection (all which, in those elder ages, were as parts
 of the body of the Canon Law) is once any men-
 tion of the name of Tenth. And indeed, that
 Councell of *Mascon*, with all other Church-Laws
 in *France*, lay a long while neglected before
Agobards time, as in the age of our fathers that of
Mascon likewise did. Yet withall, no doubt can be
 made, but that in most Churches in this time, a-
 mongst the offerings of those of the deuouter sort,
 Tenth or greater parts of their annuall increase
 were giuen, according to the doctrine of those
 Fathers before mentioned, and those other testi-
 monies

1. *Agendas Liturgiques de diff. saints de. pour familles, par M. L. edit. Molloniana, Parisij.*

in *Temple*, 1717.
Mogues, *opist.* 152.
Zacharia: PP.
ibid. *opist.* 143. &
152. *ibid.* in *vite*
Temple, 147. p.
& 10.

ST. LOUIS, MO.
JAN. 2, 1911

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n Epist. 105. ad
Cuthbertum Arch.
Cantuariensem.
Auctori item E-
pistolam illi videri
non. 107.

o Ms. in Bibli-
oth. Cotton.

p Phot. Novaten.
ep. 5. & C. de Epif-
toph & Clero. l. 39

q Biblioth. Pa-
trum, tom. 4.

r Fortè legen-
dum primitiarum
& Decimarum.

monies. Whereto you may adde that complaint
of Boniface ^a Archbiihop of Mentz, about D.
C C L. against the Clergie. *Lat & landa* (sayes
he) *ovium Christi oblationibus quotidianis ac Deci-*
mis fidelium suscipiunt, & curam gregis Domini de-
ponunt. And in an Exhortation ^o written neer D.
C C C C. yeers since: *Ille bonus Christianus est qui*
ad Ecclesiam frequentius venit, & de fructibus suis
non gustat nisi prius ex ipsis Domino aliquid offerat;
qui Decimas annis singulis Pauperibus reddit; qui
Sacerdotibus honorem &c. These also shew a vse
of payment among the firmer and deuouter Chri-
stians in those times. But they were then disposed
of diuersly; now you see to the Priests, now to Ab-
bots, now to the Poof. and when they were offe-
red to Baptismall or Episcopall Churches; they
were receiud as indefinit Offerings, the quantitie
whereof was wholly arbitrarie, in respect of any
constitution or generall Law in vse. The quantitie
of the Offerings was arbitrarie, but some kind of
Offering was necessaric. He that offered not at all,
of his fruits; was compellable, it seems, by Excom-
munication (as in the ^r Easterne Church; where
that compulsion also was taken from the Churches
autoritie in the Patriarchat of Constantinople) but
not as yet, he that offered a lesse quantitie. And that
it was a speciall bountie to offer the Tenth, you
may see in the old *Aethiopian* ^r Masse, where a
distinct prayer is for those, *Qui obtulerunt munera*
sanctæ vnice, quæ est super omnes, Ecclesiæ sacrifici-
um scilicet ^r primarum Decimarum, gratiarum
actio-

scilicet

1

actio-

actionis signum & monumentum. And it seems the disposition of the Offerings were so in the Patrons power (by the practice of some places) that hee might assigne a certaine of them to the Minister of his Church; and employ the rest at his pleasure (which agrees enough with the right challenged, in the succeeding ages, touching Investiture and arbitrarie Consecrations; whereof, more in the next CCCC. yeers) although in this age also some Canons of the Clergie subiected all new-built Churches to the Bishops government; but were little obeyed. For meere Church-Laws, hitherto. Some secular Constitutions are, that about the yeer D. C C. LXXX. were made for the payment of Tithes, by Charles King of France, Italy, and Lumbardy, and afterward Emperour. But because they fall so neere the end of this part of our Division, and are rather to be accounted amongst the Laws of his Empire (which began not till neere XX. yeers after; that is, about D. CCC.) then only of his Kingdome, and were afterward receiud into the Imperiall Capitularies, whence we haue chiefe notice of them; they are purposely referd into the next CCCC. yeeres, as the first Latitude, required in our Division, permits. Neither before them, did any generall Law, that yet remains in publique, and is of credit, ordain any payment of Tenths in the Westerne Church. For in the Eastern, never any Law, that I haue obserud, mentions them.

f. Consil. Brera.
cons. cap. 6. & vide
Tulianum 9. cap. 2.

c. Concil. Arelate.
cons. 1. cap. 13.

Between about the year D. CCC.

and neere M. CC.

C A P. VI.

- I. Payment of Tithes, how performed.
- II. Arbitrarie Consecrations of them alone (like Grants of Rents-charge) at the Lay-owners choice, to any Church or Monasterie, were frequent; and sometimes Lay-men sold them to the Church. Redimere Decimas.
- III. Appropriations of them with Churches, wherem they passed as by themselves, from the Patron severally and directly in point of interest. The beginning of Parish Churches. Disposition of the Offerings received there. Lay-foundations of Parish Churches. The interest that Patrons claymed. Right of Advowson. The ceremonie of putting a Cloth or Robe vpon the Patron, at the consecration of the Church. The vse of Inuestitures, by which (as by suerie of Seisin) Lay Patrons gaue their Churches. Commendatio Ecclesie. Benefice. None anciently received the character of Orders, but when also the ordination was for the title of some Church. Thence came the later vse of Episcopall Institution. Whence some Patrons came to haue most part of the Tithes. Canonica portio. The Clergy and Councils against Inuestitures. Their

Their continuance till towards M. C. C. when
 Institution (as it is at this day) upon presen-
 tation grew common. How Appropriations
 were in those times made. The ancient Episc-
 opall right to Tithes, especially in Germa-
 nie, and the Northern parts. How Monks
 justified their possession of Tithes and Parishi-
 Churches. The right of Tithes generally
 denied in Turingia, to the Archbishop of
 Mentz.

IV. Of Infeodations of Tithes into Lay-hands,
 both from the Clergie and Laity; and of their
 Originall.

V. Of Exemptions granted by the Pope. Tem-
 plars and Hospitalars accounted no part of
 the Clergie.

VI. The generall opinion was, that they are due
 iure diuino. but this, indifferently thought
 on, seems to have denoted rather Ecclesiastique
 or Positive Law (by the doctrine and practice
 of the Clergy) then Diuine Morall Law.

VII. Laws Imperiall; and Canons Synodall and
 Pontificiall, for the payment of Tithes. The
 grosse error of some that mistake Nona and
 Decima in the Capitularies. The first Gene-
 rall Councell that mentions Tithes.

THe practice found in the time twixt about
 D. CCC. and M. CC. from Christ, con-
 sists in some ordinarie payments of Tithes,
 as in the former ages; in more frequent Consecra-

tions of a perpetuall right of them alone to any Church, or Monasterie, at the owners choice; in Appropriations of them with the churches in which they were by custom or consecration established; in Infeudations of them into Lay-hands; and in Exemptions for discharge of payment. By the more generall Opinion of the Church, they are exprest to be due *Iure diuino*; but that is warily to be interpreted out of the generall practice cleerly allowd by the Clergie. From the beginning of this time Canons are very frequent for the right of them. But the first Law that may at all be stiled generall for it, was ordaind by Charles the Great, and receiud, but little practised, through the Empire. Of all these in their order.

I. Not only from deuotion, but through Ecclesiastique censure also, aided with secular power, about the very beginning of this CCCC. yeers, many Churches in the Western Empire, had the Tenth paid as a dutie. This may be collected out of an Epistle written by Alchwin to Charles the Great, touching the exaction of Tithes (which hee calls *iugum Decimarum* and *plena per singulas domus ex-actio*.) of the Hunnes and Saxons, who being then lately, by Charles, conquerd, had newly receiued the Christian faith, Alchwin there aduises, that it were better for the Christian cause, to omit it amongst them, till they were grown firmer, and speaks of it as a thing of known vse among other settled Christians. His words are: *Vestra sanctissima pietas sapienti consilio prouideat, si melius sit rudi-*
but

bus populis in principio fidei iugum imponere Decimarum; ut plena fiat per singulas domus exactio illarum. An Apostoli quoque ab ipso Deo Christo edocti & ad predicandum mundo missi; exactiones Decimarum exegissent, vel alicui demandassent dari, non considerandum est. Scimus quia Decimatio substantia nostra valde bona est. Sed melius est illam amittere quam fidem perdere. Nos vero in fide catholica nutriti, & edocti, vix consentimus substantiam nostram pleniter Decimari. Quanto magis teneri fidei, & infantilis animae, & mura mentis illarum largigati non consentis? This Epistle was written about DCC. XCVII. as the historicall part of it perswades; and the generall Lawes by which that exaction might have been made, are among those which about DCC. LXXX., the same Charles had ordaind in an assembly of Estates, of which more in the last Paragraph of this Chapter. But the execution of those Lawes soone afterwarde (as anon shall be declared) failing; this practice of payment also became to be of rare vse. and although diuers Synods soon followd which commanded a Tenth; as what was due of it selfe to the Church (whence also in some places a Parochial payment doubtlesse continued; and by prescription and custom established a ciuill right in some Churches) yet the Laitie (not much subiecting themselves to any Church-Lawes of the time, that toucht their possessions) frequently exercised their arbitrarie dispositions, especially of such of them as were not already consecrated, or by custom, or prescription settled,

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* Alter Eccle-
siastici. quod vide
prox.

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settled, and therein pretended them due only but as their own choice, either by Consecration to any Church or Monasterie whatsoever, or by Infeodation into Lay hands, should determine. And those also which were established by former Consecration, Custom, or Prescription, were very often arbitrarily disposed of also by Lay-Patrons in their Appropriations.

a Concil. Mog. 16.
9. c. 43. Meten.
circa ann. 890. cap.
2. Mog. circa a. d.
846. Benedictini Le-
uitilib. 3. c. 46.

II. For arbitrarie Consecrations; the ^a Laws ordained in the first of these CCCC. yeeres, that speak of *Decimationum proventus prioris Ecclesie legitime assignatus*; and *legis ubi decime fuerant antiquitus consecratae*; and *Decime quae singulis dantur Ecclesiis*; and such more point at the vse of them. And although, out of any continuance alone of voluntarie payment, a kind of Parochiall right (which also by the Laws ^b of the time euery Rector should haue enjoyed in the Territorie where he dispensed the Sacraments) were created, yet Consecrations of Tithes (not yet established by a ciuill title) made to the Church of another Parish at the Lay-owners choice, were practiced and continued in force; as may plainly be collected out of an old Law about the beginning of these yeeres made (but not put in execution) for punishment of such consecrations by compulsion of the partie to restore to the Church the quantitie of the Tithe so aliened. *Quicumque* (are the words of it) *Decimam abstrahit de Ecclesia ad quam per iustitiam dari debet, & eam presumptiose, vel propter munera aut amicitiam vel aliam quamlibet occasionem, ad aliam*

b *Leg. 4. de c. 16. q. 2. de Monachis c. 45. & c. 56. de sepe in Capitularibus.*

c *Leg. Longobard. lib. 3. tit. 3. cap. 7. Hloderici Imp. & in Addit. 4. ad Capitular. cap. 73.*

liam

aliam Ecclesiam dederit, Comite vel a iuffo nostro
disfringatur, vel eiusdem Decima quantitatem cum
sua lege restituatur. So another was made against
 parsons, vnder paine of deprivation, that they
 should not perswade Parishioners to come to
 their Churches, & *suas decimas sibi dare.* With it
 agrees the complaint made about the same time in
 the Councell of *Pavia*, against such as vsed to
 giue away their Tithes *aljs Ecclesijs prohibitu.* And
 many expresse examples are of such grants made,
 not otherwise then as of Rents charge arbitrarily
 created. Some shall be here added. But, because
 since the last chapter printed, the Charrulary of the
 Church of *Vtrecht* among many other select mo-
 niments to the purpose of this discourse (through
 the fauor of that right worthy and learned *S^r Ro-*
bert Cotton, my most honored friend) came to my
 hands, wherein an obseruable consecration of tithes
 in the former *CCCC.* years, is preserved; it shall
 here (not much out of its place) be first rememberd.
 There, in confirmations to that Bishopricke made
 by *Pipin*, *Charles* the great, and other of the suc-
 ceeding Emperors, is expressed that some neer an-
 cestors of that *Charles* (as the elder *Pipin*, *Charles*
Martell, *Carloman*) had giuen great endowments
 to it, and among them, *Omniem Decimam de Man-*
cipijs, terris, & telonjs, vel de negotijs, vel de omni
re, vndecunq; ad partem regiam fisco, & teloneum exi-
gere aut accipere videbatur. it seems it must be re-
 strained to what the grantors possessed in the Terri-
 torie about *Vtrecht*, although no such thing ap-

2. *Thymus* L.
No. 10. 7. 1841.

c. Syned. Tichonoff
c. 16. g. l. o. in f. 100
Carnegie 56.

*Vallia, anno
alia, diploma illud,
dat. s. Lohmst. v.
Imperatores, in
quoque superio-
res considerant,
recedunt.*

appears in the diuers Charters there remaining of it. For the following times; in the same Chartularie, is a commemoration of the possessions of the Bishopricke, wherein diuers particular Tenths possessed by speciall grant are reckoned; as Tenths of wreck, of treasure troue, of fishing, and a relation is of promise made to the Bishop by one *Gutha* to endow a Church, which he gaue to *Vtrecht*, with the Tithes of diuers Mannors. In *Beuorhem* (the words are) *tradidit Gutha Ecclesiam necdum consecratam in ius & dominium Sancti Martini* (to that Saint was the church of *Vtrecht* consecrated) *ea videlicet ratione, vt, post consecrationem eiusdem Ecclesie, Decime darentur ad supranominatam Ecclesiam de villis hys nominibus vocitatis; Beuorhem, Gisteshem, Hegginghem, Schupildhem.* And in the yeer DCCC. LII. *Ragimer* Duke of *Lorrain*, for the health of his own soule, and the soules of his wife, children, and parents, giues to the Abbey of *Vita* in *Verdun*, a whole Town called *Longuion* with the appurtenances, and all the Tithes of the Land that he had within the bounds and precinct of the same Town. *Villam nostram* (as the Charter speaks) *que dicitur Longuion cum omnibus appendicijs suis ac Decimis quas in Banno dicta villa habebamus.* and one of his successors *Ragimir*, by Charter dated DCCCC. XLVI. for like consideration gaue to another Monasterie, seated vpon *Moselle*, all the Tithes within the libertie of the Town where it stood, in these words; *Imperpetuum omnes Decimas quas habeo in Banno prefati oppidi*

g. Diplom. 17.
83 in Stemmat.
Lotharinge apud
Framise de Reffere

inamblado; *quam in vino*; *ac alijs rebus* where
Bannus or *Bannum* is vsed for the continent with
in the vtmost precinct of the Town; in which sense
Banleuca, as also *leuga circumiacens*, occurs in the
moniments of this Kingdom, as^h *Banleuca de A-*
rundell, for all comprehended within the limits or
land adioyning, and so belonging to the Castle or
Town, which are both as one to this purpose. So
the Monks of *Clugny* in *Burgundie*, founded by
William Count of *Auvergne* in the yeer DCCCC
X. had Tithes of diuers possessions giuen them;
which the phrase of the time stiled *Decimas indo-*
minicatas, in a Charter to them made by *Lewis* the
fourth of *France*, in the yeer DCCCO. XXXIX.
and those Tithes were often confirmed to them by
Pontificiall autoritie: as by *Agapetus* the second,
Lucius the second, and afterward by *Urban* the
third, in the yeer M. C. LXXXV. in whose Bull, a
recitall and confirmation also is of an instrument
of *Adhemar* Bishop of *Xantoigne* made to this
Monasterie, that hath these words in it. *Damus &*
concedimus vobis Decimas quas a Laicis acquisitis
vel acquirere poteritis, with a command that Lai-
men in the precinct of their Abbey, should not
conuey their Tithes to any other Churches. And
when the Abbey of *Vendosme* was founded about
the yeer M. L. by *Godfrey Martell* Earle of *Aniou*,
the Tithes of the Salt-pits in some part of *Poitou*,
were consecrated to it: the like had the same Mo-
nasterie in some Salt-pits possessed by the Bishop
of *Xantoigne*, which although it had enioied for

h In placit. de
101. & 101. apud
Cicestr. 47. Nov. 3.
20. 44.

i Biblioth. Claudi-
conf. pag. 265.

k A. D. 944.
l A. D. 1144.
m Biblioth. Claudi-
20. pag. 2447.

n Ex Tabular. Mo-
nasterij apud Lou-
ren. in arch. de
G. Pindarum.
pag. 40.

threescore yeers, yet the Bishop began to denie a-
ny more paiement, and for his owne gaine, would
haue maintained this opinion, *That no church-lands*
were to pay Tithes to any Church. But Godfrey Ab-
bot of *Vendosme* about the yeer M.C. XX. sharply
corrects him in an Epistle, and shews that the opi-
nion of all *France* and *Italie*, then was, that al-
though lands charged to any Church with the pai-
ment of Tithes, were possessed by another Church
or Monasterie, yet the Tithes were still payable
Parochially from the one Church to the other.
That Abbots words are obseruable, because also
they shew a generall practice of paiement Parochi-
ally by Churches to Churches. Nobis dictum
est. *(saith he)* quia dicitis, quod Ecclesia non
debet Decimam dare. Hoc verum est, vbi Eccle-
sia nihil habet in Paroecia alterius Ecclesie, vbi
vero Ecclesia, in alterius Ecclesie Paroecia, pos-
sessionem aliquam habet, vel quippiam quod De-
cimari debeat, ibi Ecclesia Ecclesie & Decimam
reddere debet, si illud iuste possidere desiderat.
Hoc tenet *Italia*, hoc tenet *Gallia*, ibi enim no-
uimus Ecclesias Ecclesijs Decimas reddere, &
maiores minoribus, & minores maioribus, vbi
altera earum possessionem obtinet in iure alteri-
us. hoc facimus Ecclesijs, hoc Ecclesie fecerunt
nobis. and according to this had he a Decree
for the Monasterie from Pope *Calixtus* the second.
This, by the way here, for paiement among the
Clergie. But for more arbitrarie consecrations by
Lay men, in the yeer M.C. XXXI V. *Ansellus de*
Garlanda,

o Goffrid. Vind.
clonus lib. 1. E.
p. 149.

p Ita etiam Pe-
trus Clunien. lib. 1.
Epist. 33. & 36.

Garlanda,

practice of our own Nation by it selfe declared. Out of them all (being but few in regard of what questionlesse might be had in the Records of churches, and Monasteries, yet remainyng in other States) you may find a vse of that arbitrarie disposition till about the yeer M. C. C. when the distribution of Tenths also to the Poore according to the owners free will (which I take to be consecrations, or grants to Monasteries; for the Monks were vsually called *Pauperes*; and were so indeed by their vow) was expressly complained against, as a great fault of the time by Pope *Innocent the III.* For he then preaching of *Zache's* charitie, that consisted aswell in making restitution of what was due to others, as in erogation of almes to the poor, obserus that he gaue of his own, and paid what was other mens. *Dedit proprium & reddidit alienum. Grauius ergo peccant* (saies he) *qui Decimas & primicias non reddunt Sacerdotibus, sed eas pro voluntate sua distribuunt indigentibus.* But as great a fault as it was, it was a common one; and being committed by the Laity was vsually allowd in fact by the Pope and the Ordinaries; whatever they thought of it in right. And of such autoritie was this vse, that an opinion was bred from it among very great men of the Clergie, that, as arbitrarie Consecration was a cause of the right of Tithes in a Church whereto they were conueid, so continuall payment of many yeers (which being by diuers, of the more deuout, faithfully performed, those Clergie men tooke as equivalent to a personall consecration of the

In form. l. de
Dedicatione Temp.
p. 1. l. 1. m. 1.
nec vigorem e-
iusmodi donatio-
nis obtemperare san-
cti illi, m. 1. m.
m. 1. m. 1. m. 1.
Apollonia.

In form. l. de
Dedicatione Temp.
p. 1. l. 1. m. 1.
nec vigorem e-
iusmodi donatio-
nis obtemperare san-
cti illi, m. 1. m.
m. 1. m. 1. m. 1.
Apollonia.

e Vide etiam qua
in proxima secti-
one de Davis, Tu-
ringe, alijs item
officuntur.

only of feudall Tithes. But neither did the Laity thus only - dispose Tithes not already consecrated, but in some kind also (by Appropriations) such as were before established to Parochial Churches.

III. In declaration of the course of *Appropriations*, it is first necessarie, to know so much of the nature of *Parish Churches* in those times, as without which the *Appropriations* then vsed cannot be vnderstood. Briefly therefore, for *Parish Churches*, it is plain that as *Metropolitique Sees, Patriarchats* (*Exarchats* also in the Eastern Church) and *Bishopriques*: those greater dignities, were most vsually at first ordaind and limited according to the distinction of seats of government, and inferior Cities, that had been assigned to the *Substituts* or *Vicary* of the *Presecti-pratorio* or *Vice-Royes* of the East and West Empire, so were *Parishes* appointed and deuided to severall Ministers within the Ecclesiastique rule of those dignities, according to the conuenientes of Country Towns and Villages; one or more or lesse (of such as being but a small Territories might not by the Canons, be *Bishopriques*) to a *Parish*; the word *Paroecia* or *Parish* at first denoting a whole *Bishoprique* (which is but as a great *Parish*) and signifying no otherwise then *Dioecese*, but afterward being confined to what our common language restrains it. The *Curats* of those *Parishes* were such as the Bishop appointed vnder him to haue care of soules in them, and those are they which the old Greek *Councils* call *ἐπισκοπικὴν ἐκκλησίαν* or *ἐκκλῆσιαν*.

1. The first part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy. It is found that the state has played a significant role in the development of the economy in many countries, particularly in the case of developing countries. The state has been involved in the provision of infrastructure, the regulation of the economy, and the provision of social services. The role of the state has been particularly important in the case of countries that have experienced rapid economic growth, such as South Korea and Taiwan. In these countries, the state has played a key role in the development of the economy by providing infrastructure, regulating the economy, and providing social services. The state has also been involved in the provision of financial support to the private sector, which has helped to stimulate economic growth. The role of the state in the development of the economy has been a topic of debate for many years, and it is clear that the state has played a significant role in the development of the economy in many countries. The state has been involved in the provision of infrastructure, the regulation of the economy, and the provision of social services. The role of the state has been particularly important in the case of countries that have experienced rapid economic growth, such as South Korea and Taiwan. In these countries, the state has played a key role in the development of the economy by providing infrastructure, regulating the economy, and providing social services. The state has also been involved in the provision of financial support to the private sector, which has helped to stimulate economic growth.

d Videlicet Aus-
tralis, & Sept. PP.
in Spiss. Doro,
Hannover, & Berol.
in Opus. 33. & 34. 35
& Consularis-
primis & Episcopis
Qualiter in Na-
viliis Gallicis, & in
Episcopis, & 37.
aliquos Franco-
fortens. & PP.
Berolinj, Dami-
as in Pichon.

D. Council, Lords. -
cap. 6.

f. *Xanthoxylum* sp.
g. & vide *Antio-*
chia sp. 17 & 19.

ὁνομασται οὐκ ἐστὶν ἰσὺς ἀποστολικῶν, that is, *Prebyteri*
 & *Parochiani*, within the Bishopricke. neyther
 were the *Chorepiscopi* much different from them.
 These had their Parishes assigned them, and in the
 Churches where they kept their Cure, the offerings
 of deuout Christians were receiued, and disposed
 of in maintenance of the Clergie and reliefe of
 distressed Christians, by ^b the *Oeconomi*, Deacons,
 or other Officers thereto appointed vnder the Bi-
 shop. Neither had those Parochiall Priests at first
 such a particular interest in the profits receiued in
 Oblations as of later time. All that was receiued
 wheresoeuer in the Bishopricke, was as a common
 Treasury to bee so^t dispensed. One part was al-
 lowd to the maintenance of the Ministerie (out of
 which euery Parochiall Minister had his salary, ac-
 cording to the monthly pay spoken of in the first
 CCCC. yeers) another to the reliefe of the poor,
 sicke and strangers, a third to the reparation of
 Churches, and a fourth to the Bishop. so, it appears
 by the ancient ^d Canons, if we may at least herein,
 coniecture of the vse of the time, by what they
 haue ordained. And it is like enough to haue been
 no otherwise, so long as these Parochiall functions
 were so personall that they were not as now, so an-
 next to foundations and endowments, but rather
 exercised as by messengers, sent from the Bishops,
 who had no such reference to Lay-Patrons, as they
 that afterward came in vpon Inuestiture or Pre-
 sentment haue had, but only were protected by
 some appointed by the State for ^e *iudicij*, or Defen-

L

fores

^a Lay. *Alman.*
cap. 13.

^b Vide *Concl.*
Gangr. Can. 67. &
Chalced. Can. 204.

^c Vide *Concl.*
Amish. c. 103. &
104. & *Ordon. c. 12*
§. 1. & 25.

^d Synod. *Rom. sub*
PP. cap. 5. & *Galat*
sub Daron. cap. 17.
atque hic distinctio-
nis modus in usu
erat versutioribus
iustitiae et Chri-
stianis; quod in-
nuunt *Walefridus*
Strabo (qui floruit
a. d. 840. lib. de reb.
Ecclesiast. cap. 17.
vide *Grat. c. 12. q.*
2. & 26. & *supra*.)

^e Vide, si placeat,
Theodor. Balsamon.
in *MARITIMIS*
pag. 454. post *Concl.*
Concl. Can. 7. In-
stitution. Nouell. 15.
& *Capitular. Ka-*
rol. & Ludm. lib.
5. cap. 31. & lib. 7.
cap. 504.

sores of the Church, as they called them the name of *Defensores* being in the primitive time, for this and other purposes, given to such Protectors, *ἡμεῖς ἀπαλλάξαμεν καὶ τοὺς ἀδυνατούντας*, in regard of their assistance and helpe to such as suffered injury, as *Iustini-ans* words are. And in the first ordination of this Hierarchie of Bishops and Parochiall Priests, it seemes, in some Lands wherewith the Bishopricke was endowed, the Churches were created, in which the Bishop had a kind of right of aduowson; who, taking on him the generall care of his Diocese, ordained Incumbents in euery of them. and the oblations there receiud were of the Churches common treasure, and so to be diuided and disposed of quadripartitly. But that quadripartit diuision was chiefly in the Diocese of *Rome*. For by some *Canons* of the *French*, *Spanish*, and some other Churches, it was tripartit, and had other differences. But, all this in the primitive times. and from the first establishing of Christianitie by a disposition of the Hierarchie, till about D. yeers from Christ, it seemes, it continued. and such kind of Parishes only were those spoken of in that Epistle of Pope *Denis* the I. about C C L X. if at least that Epistle be not a fiction. if it be, then our Canonists doe ill to vse it at all. if not, then plainly they abuse it, where they pretend in it an originall of such kind of Parishes as since for the most part haue had their beginning from lay-foundations. But not long after such time as lay men began to build and endow Parish-Oratories or Churches

f. *Concl. Ansel. 1.*
cap. 13. *Tolran. 9.*
cap. 6. *Brutor. 1. ca.*
3. & vide *Ansel. 1.*
Capitular. lib. 1. c.
27. & *Adm. ad*
Capitular. 1. cap. 17
et *1. 2. 3. 4. 5. 6.*
f. 119.

g. In *Epist. Doro-*
te. Sc. in 1. 1. 1. 1.
Bartholom.

ches in their Lordships, and in them place or in-
uest Chaplaines (ordained, that is, made Priests by
the Bishop, but not instituted by Presentation as
at this day) that might receiue the offerings of
such as repayed thither for holy seruice; that for-
mer kind, of making a common treasurie in euery
Diocese, was discontinued, and the Chaplaine or
Incumbent, acknowledging the Lord, of his
Churches Territory, for Patron, (not much other-
wise then, as in the ancients course, euery Paro-
chiall Priest did the Bishop that collated to him)
receiued now the profits that rose out of Chri-
stian deuotion, to a particular vse of his owne
Church; the Canons neuerthelesse sauing the
fourth part to the Bishop. For, that Episcopall
right grew afterward to bee so established by the
receiued^h Canon Law, that till this day, where
prescription of X L. yeers excludes not, the fourth
part of all Oblations and Tithes are, by it, due to
the Bishop, and someⁱ Canonists make it as a duty
succeeding in lieu or proportion to the *Tenth* of
the Tenth that was payd by the Levites to their
Priests. But howeuer the Canons were (in which
also it had beene often constituted, that euery
Church^k and the profits thereof should be subiect
to the Bishops disposition, as to the only immediat
superior; and in some^l that the founder should be
utterly excluded from all interest) yet diuers lay-
Patrons in those elder times had, or at least chal-
lenged, in the Oblations receiued from Christian

^h Extr. de Offi.
Ind. cap. 16. congre-
gatio, & de pra-
scrip. c. 4. de quarta

ⁱ Pœnerius ad tit.
de Decim. c. 1. n. 3.

^k Diff. 96. q. 2. 16
9. 7. passim.

^l Diff. 297. 26.
glea mensur.

deuotion in their Churches, an interest somewhat like to what more anciently the Bishop had in the offerings made at the Churches wherein hee only placed the Ministers. Whence the erecting of Churches became, amongst some, to bee rather gainfull then deuout. for the Patron would arbitrarily diuide to the Incumbent, and take the rest to his own vse. This is manifested in the II. Councell of *Bracara*, held about D. L X X. where a Canon forbids the consecration of Churches built not *pro sanctorum patrocinio*, but *sub tributaria conditione*, as the vse was of some places; that is, to the end that the lay-founder might haue halfe or other part of the Oblations. *Si quis*, are the words, *Basilicam non pro deuotione fidei sed pro questu cupiditatis edificat, ut quicquid ibi de oblatione populi colligitur, medium cum Clericis diuidat, eo quod Basilicam in terra sua questus causa condiderit, quod in aliquibus locis vsque modo dicitur fieri, Hoc ergo de cetero, &c.* And such a practice is titled a custom of the ancient times in an Epistle attributed to Pope *Damasus*. And in the I X. Councell of *Toledo* about the yeer D C. L X. Lay-Patrons are forbidden to *vse iuris proprii potestatem* in Church goods or lands, as if great pretence in those times had been of their right in disposition of them. and, in the Imperiall Capitularies of about the yeer D C C C. diuers times prouision is made against such lay men as thought it had been their right only to dispose of the endowments and offerings

^m 1. C. 30. §. 1. c. 17

ferings of such Churches as they were Patrons of, and that the Bishop should bee wholly excluded. But it fell at length that, without much difficulty, the Church, what through Constitutions, what through Constitutions, what by their Doctrine, had remedy for this vsurpation vpon the Offerings solemnly consecrated to the Priests at the Altar. And in the following times it had been abstained from as the playnest part of sacriledge. Yet neuerthelesse, another interest, that is, the interest of Patronage, and a right of disposition of the Temporall endowments, which the Lay founders first challenged in their new erected Churches, which was a right of Collation or Inuestiture, whereby the Incumbent might receiue full possession without ayd of Bishop or other Church-man, could not so easily be gotten from them, although some Imperialls were provided against it. For although no lay man could, of himselfe, make any building to bee a Church, without the Bishops consecration of it (as euen among the Gentils, it was carefully foreseen, that in all new Temples one of the Priests solemnly holding a Pillar of it in his hand, should make the dedication) yet it being consecrated and endowed, the lay Patron, in these ancient times, tooke vpon him not only the *Aduocationem*, or aduowson (that is, the defence or patrocinie of the Incumbents title; as *officium aduocationis* is vsed in the Imperialls) but also the Collation by Inuestiture without presentation at

n Capitula. Kero-
li & Ludouici lib.
7. c. 23.

o Clero in Orat.
pro domo sua.

d Papien. ff de rei
vindicatione L. 54.

q. Anonym. in vita
S. Valerij cap. 7.

r. Ius Carnoten.
Epist. 41. & passim
Jurisperiti.
f. Petrus Damian.
lib. 2 Epist. 13. ad
Alexand. 2.

euery vacancy. And the right of aduowson (where
to the other of Inuestiture in those times was an-
next) in some places the Bishop confirmed to him
by putting a Robe or such like on him at the dedi-
cation. as the example q is of *Vlrique* Bishop of
Aussourg, in one of his dedications, about
DCCCC. L. where *Consecratione peracta* as the
Autor sayes) *dotique contradita comprobato illis*
presbytero, altaris procuracionem commendauit, &
Ecclesie Aduocationem firmiter legitimo heredi, Pa-
no imposito, commendauit. From this right of Col-
lation and Inuestiture reserved by Lay-Patrons,
the practie came to be that Parish-Churches and
all the temporalties annex to them, as the glebe
and tithes (and what else in succeeding times be-
came to be endowments) were at euery vacancy,
conferd by the Patrons to their new Incumbents,
by some ceremony, not differing from our liuerie
of Seisin (which is nothing but Inuestiture; for In-
uestiture r is only the immediat giuing of seisin or
possession) with these words, f *Accipe Ecclesiam*, or
the like. Neither vpon presentation did the Bishop
institute, as of later time the vse had bin. and where-
as, at this day, nothing passes out of the Patron, or
vests in the Incumbent, in point of interest (the
presentation being only as a nomination, and the
interest and possession being immediatly had from
the acts of the Bishop and Archdeacon) it was far
otherwise in these elder times. For the Incumbent
as really, as fully, and as immediatly receiued the
body

body of his Church, his glebe & what tithes were
 ioyn'd with it, in point of interest from the Patrons
 hand, as a lessee for life receiveth his Lands by the
 Lessors livery. whence by the phrase of the time
 that kind of giving a Church was stiled *Commenda-
 tio Ecclesie*, that is, the Lay Patrons committing
 or *livery of the Church* and the endowments to
 the Incumbent to take care of and dispose as a V-
 usufructuary of what the Patron was Proprietarie,
 or as a Tenant of that whereof hee was in the re-
 version, and in such sense is *Commendo* vsed, ioyn'd
 often with *trado*, in Tully as, *Commendo, ac trado*.
 and hence came the *Commenda*, wherein not the
 Title, but possession, profits, and custody of the
 Church is committed, and the difference is obuius
 between *Ecclesia titulata* & *commendata* *commenda-
 ta* having chiefe reference to the possessions. And
 hence was the name of *Benefice*, for a Church and
 endowments so given. For as such lands or annui-
 ties, as in the Empire, were given for perpetuall
 salaries to military persons, had the name of *Be-
 neficia*, so, what was thus conferr'd vpon spirituall
 souldiers in the Church, had afterward the like ti-
 tle. But, at this Commendation of the temporalities
 so made only by the Patron, the Bishop indeed had
 the usuall consecration of the Incumbent, but no-
 thing at all to do with the dispositiō of the church
 or endowments. For, the Law then being that Or-
 ders could not be given *sine titulo*, or
absolutely, but only when a Title of a Church, or
 some

*1. Bened. 1. l. 1. c. 1. de
 lib. 5. cap. 29. & 30.
 Adde 4. c. 37. & 38.
 und. Rom. 1. c. 2. q. 7.
 c. 33. Monasterium.*

*2. Cancell. Cheteld
 Com. 174 & 179.
 70. vide si placet
 extr. de prebend. cap.
 16. cum firmatum.*

some speciall Ministry was at the same time assigned to the ordaind Clerk; all orders otherwise giuen being void, so that at euery new inuestiture a lay Patron could not haue (as at this day) a Clerk alwaies ready made for his Church; it was a necessity that for euery new inuestiture (vnlesse a resignation of some other Church had preceded) the Bishops Ordination or Consecration was to be vsed, which afterward grew to be what now is Institution. And although the character of Orders were generall, in so much that, as now also, he that receiued them was a vniuersall Priest, yet, in euery Ordination, speciall expression was made of the Title of the Church (that is, the Saint, Angell, or Martyr, to whose memory the Church was dedicated; in words ² to this purpose: *Eligimus in Ordinem Presbyterij &c. ad titulum S. Marie, ad Ecclesiam quæ est in pago illo &c.*) to denote that the end of it was that the Ordained should there exercise his spirituall function, and not leaue it during life. for which a Law was made also that such as were to be cōsecrated or ordaind by the Bishop, should before they were ordaind by the Patron in the Church (for the Inuestiture or Commendation was also an Ordination; and by the name of *Ordinatus* also, was hee denoted that was so inuested should either by oath or caution secure their continuance vpon that Church only. so you must ² vnderstand that in the Capitularies, *Vt Presbyteri qui in Titulis consecrantur, secundum Canones, antequam Ordinentur promissionem, stabilitati*

x Ordo Romanus
de Diuini Officii.

y Videtur Duer-
sum de sacris Eccl.
Ministeriis lib. 1.
cap. 16.

z Lector lib. 5.
cap. 103.

lituris loci illius faciant; the vse then, it seemes, being, that Clerks ordaind would at their pleasure resigne into the Patrons hand (for it is probable, that resignation in those times, into the Patrons hand, without assent of the Bishop, like surrender of particular tenants to them in the reuersion, was in practice, and denested the title of the Church, although at this day, by the Canon Law, it be grown cleerly otherwise) and being then capable, without new ordination of the Bishop, of any Spirituall Function, would take Inuestiture of other Churches without consent or knowledge of the Bishop; against which also, some Laws were made in the beginning of this C C C. yeers, but with the rest, little obeyed. From this vse of Commendation, or Inuestiture, it came also, that if an Aduowson had descended in coparcenerie, the Church had as many encumbents as the parceners had parts. *Singula partes singulos habebant Presbyteres*: Euery of them giuing an interest in a part, according as they might haue done of any other inheritance descended vnto them. Nor (as it seemes) from other originall then this challenged and practised interest, came those *droits honorifiques des Seigneurs es Esglises* (whereof you may see the Treatise lately written by *Matthias Marechal*) and the custome yet remaining in diuers places, especially in *France*, whereby the Incumbent hath not for himselfe aboue a

M

small

a Vide *modum*, lib. 6. cap. 177. & lib. 7. cap. 173.

b Vide *modum*, lib. 5. cap. 24. & 25.

c *Ad illud ad Capitulum*, cap. 25. de *Consecr.*, *Liber*, sub *Alex. 3. C. de*, 27. & vide *Append.* ad *illud*, *Consecr.*, par. 25. cap. 7.

d Vide *modum*, lib. 6. de *Præbendis*, c. 70. *extirpanda*, & de *hæred. patroni*, c. 21. *potestas*, & lib. 6. lib. 6. de *Præbendis*, cap. 1. *sub*, & le *Code des Deu.* *et* *Portant*, *Diff.* 15. lib. 1. lib. 10.

e Chron. Richer.
serg. pag. 176. &
304.

f Vide Synod. ec-
cl. sub I. can. 9.
An. D. 904. vt
omnis decimatio
de. & Synod. An.
904. can. 1. & 2.
&c.

g Vide Facit.
Canon. cap. 7. & 8.
Et ad ea Zonaras.

small part of the Tithes, at the arbitrarie dispo-
sition of some spirituell Patron, who takes the
rest (according to this anciently practiced inte-
rest of Patrons) to his own vse. What is so al-
lowd to the Incumbent, is stiled his *Canonica*
portio; which was, I think, & reserved to him in
some Grants of the Archbishops of *Salzburg*
as Patrons, of their Tithes, to the Abbey of *Re-*
oberpurg in the year M. C. XLIV. Neither
let any man out of this, or from other autoritie
in ¹ Canons, gather, that all Tithes were arbi-
trarily disposed of by the Bishop in these midle
times; which yet is falsely affirmed by some that
rashly thinke, what ever a Canon mentions (be-
cause some of the Clergie would haue had it so)
was a practice of the time. but the contrarie
plainly and frequently appears. only as in the
primitive times, when Parishes were not distin-
guished by limitation of Ecclesiastique profits,
but only by the Ministers Function, the Bishop
alone challenged, and frequently had, all Offer-
ings, or *decimatio*, as appears in those old Canons
before mentioned, and especially in those of the
Councell of *Constance*, made against the *Eu-*
stathians; so also after payment of Tithes grew
into more vse in these midle times, he pretended
by the Canons (as in the examples which wee a-
non haue of the *Turingians*, and those of *Holiz*.)
a right to Tithes through the whole Diocese, at
his parish, where no Parochiall right was sciled
in

eo plurimas perturbaciones in Ecclesia in ruinam sancte religionis oriri, ex quibus Christiana religio concutitur. Decernimus ut nullus Clericorum Inuestituram Episcopatus, vel Abbatia, vel Ecclesia de manu Imperatoris vel Regis vel alicuius Laici persone, viri vel femina, suscipiat. And in the generall Council of Lateran, held in M. C. XIX vnder Calixtus the second, chiefly against Inuestitures, one Canon is, In parochialibus Ecclesijs Presbyteri per Episcopos constituantur, qui eis respondeant de animarum cura, & de ijs que ad Episcopum pertinent. De iura & Ecclesia a Laicis non suscipiant absque consensu & voluntate Episcoporum, Et si aliter presumpserint fuerit Canonica ultioni subiaceant. The like was in the next generall Council vnder Innocent the second. and very many other Pontificall Decrees were to the same purpose. For by this time, through the use of giuing of Orders without Titles of Churches (against the old Canons) and Resignations into lay hands, every lay Patron easily could haue a Clerk capable of his Benefice, and so inuest him, without so much as notice of the Bishops. And, notwithstanding those Decrees, both Oecumenicall and Pontificall, that practice of Inuestitures could not presently be taken from the Laie, although soon after that generall Council held vnder Innocent the second, in M. C. XXXIX. it began to be lesse frequent, and Institution vpon Presentation here

in Extrat. Ro-
mana & Illionis,
pam. 4. Vti & illud
sub Innocent. 2. co-
lebratum, & in
Vaticana seruan-
tur Mss. iam verò
etiam in nouera
Dini editione re-
peritur.

a. Rabentur hnd
Gratiani d. 1.
c. 1. 16. 2. 2.

o. 2. 70. 1. 1.

o. 2. 70. 1. 1.

o. 2. 70. 1. 1.

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o. 2. 70. 1. 1.

here and there succeeded it. But not long before that Councell, it was much complained against by the Clergie, and filed by some of them *Hæresis inuestitura*. Others of them by no means admitting it to be an Hæresie, but only a usurpation of the rights of the Church, which should not be disposed of by lay hands. Besides other occurrences of Inuestitures in Epistles, Councells, and Scorie of about M. C. you may see especially the Epistle twixt Iuo Bishop of Chartres, and Iohn Archbishop of Lyons, with others of Godfrey Abbot of Vendosme (all written about M. C. XIX X.) in which it is largely disputed of, and in them it appears plainly, that although the Church would neuer haue permitted it to the Laitie, and did also sometimes extort renuntiatiōs of it, yet the Pope often re-granted the right of it in France and Germanie to such as had renounced it. Whence also Iuo concluded, that it was but a ciuill right belonging (by their Canons) to the Church, and no such thing, as of its own nature, could not be enjoyd by the Laitie. But the Canons gaining force, as the Papall power increased, at length, about the end of this C. C. C. years, it became wholly out of vse. for not till then was it left off, and that the abuse of Institutions vpon Presentations was not before commonly practiced (especially in the case of lay Patrons) appears by diuers of Canons relating as much, to which I

o Vide Goffrid.
Vindocinens. lib. 3.
cap. 11. & Innocent
Carnot. ep. 335.
238. & 239.

p. Concil. General.
sub Alex. 1. can. 9.
c. 14. Extr. de iure
Patron. l. 4. c. 11.
de iur. de iust. l. 1.
de iur. de Probatio.
c. 31. in Lateran.

referre you and more hereof in the English vsc. By reason of these Inuestitures (wherein the Glebe, Tithes, and all Endowments of the Church, as well as the Church it selfe, in point of interest or estate, passed from the Patron, and at every vacancie were in him as in the only proprietarie of them) when Appropriations in these ancient times were made, it was not only the Church it selfe, or the *Titulus Ecclesie* (for that also, once by consecration created, was given by lay Patrons, when the Clerk had already his Orders) or the patronage, that was directly in point of interest conueyed, but withall the Glebe and Tithe made parochiall by Grant, Foundation, or Custome. And the title of the Church, the Monasterie (according to the Patrons prouision in many Appropriations; and in others, at their pleasure) still gaue afterwarde by Presentation of a Clerk, whom the Bishop instituted. For the Clergie, except Bishops and such as had Episcopall right by priuiledge, gaue vsually by Presentations; these Inuestitures being altogether against their Canons, and like the Bishops Collations. Neither did any such thing follow vpon such Presentation as Disappropriation, in regard of the Endowments or Temporalities: for such was the nature of the Appropriations, that the Church remained notwithstanding presentatiue. and the Incumbent, that came in by presentation, had the Church only

p. Adhanc rem,
vide r. 169. 2.
2. & 6.

under the name of Vicar, and in anothers right,
and receiued the Tithes and the profit of the
Glebe, no otherwise then to the vse of the Mo-
nasterie, in which the Appropriation had settled
them, as Inuestiture should haue done in an In-
cumbent. Neither was the Title of the Church,
and the Endowments, so entire a thing, but
that, according to the Parrons interest and will,
they might by the Law then in practice be se-
uerd. The ordinarie instruments of such Appro-
priations plainly shew it. And all the mainte-
nance of the Incumbent was at the bountie of
the Monasteries allowance. And it is exprest y-
sually in old Instruments of Appropriations,
that such a Clerk should answer to the Bishop
de spiritualibus, vobis autem (to the Monasterie)
de temporalibus. Which is complaind against in
that of Iohn of *Salisburie*: *Personatus quosdam*
introduxerunt, quorum iure ad alium onera, ad ali-
um referuntur emolumenta. Herewith agrees the
generall^e Councell of *Lateran*, held in the yeer
M. C. LXX X. where the ancient course of fil-
ling Churches, thus appropriated to Religious
Houses, is commanded to be thenceforth better
observed. *In Ecclesijs suis quæ ad eos pleno iure*
non pertinent (that is, those which they held both
exempt from Episcopall Iurisdiction, and in
them had the right of Institution and Destituti-
on by Priniledge) *instituendos Presbyteros Epif-*
copis presensent, ut eis quidem de plebis cura re-
spondeant;

De Hered. Ca-
pitulum, lib. 7. c. 37.

Ita etiam in
lib. de Privilegijs, c. 2.
§. in Ecclia, c. 1.
C. 11. General.
ad D. 1115. cap. 61.
c. 11. de Prob. &
c. 11. de Luc.
c. 11. de App. ad Com-
m. Litteras de 1115.
D. 1115. in de 1115.
Parronatus c. 11.
Et Roger. Hinc. de
in annal. fol. 450. b.

spondeant; ipsis vero de rebus temporalibus rationem exhibeant competentem. For how euer by the Canonists of later time, this in the Councell, and in our Appropriations, be vnderstood variously, and, for the most part, of Churches where of Religious Corporations had only the Patronage, and according to their Law, no propertie; whence also they interpret that *rationem competentem* for an account only which the Patrons might exact, but not for a denoting of the propertie or right that the Religious Houses had in the profits; yet doubtlesse in those times; that *suis Ecclesijs* in this and the like Canons had reference to Churches appropriated only, or to such as were possessed by equall right to expresse Appropriation. And although *Innocent* the fourth, being of the ancientest Writers on the Decretals, rather iustifies that more common opinion (whereof you may haue most speciall declaration in our *Lindwood*) yet others, and as great Lawyers of that time, expressely suppose, that the Temporalities are by that passage vnderstood due and payable to the Monasterie, and that not an account only was to be made of the dispensing of them. Expressely *Hosliensis* vpon the difference of their Churches held *pleno iure*, and not *pleno iure*: *Vbi pleno iure non pertinet, tunc habet ibi Monasterium temporalia & representationem Prasbyteri Vicarij tantum &c.* Whereas if it were theirs *pleno iure*, they had also

t Vide cum ad
tit. de Prob. c. in
L. de trans. 31. &
tit. de Priuileg.
c. 16. in Ecclesijs
edizione Venet.

u Causis. pro. tit.
de locato & conda.
Ho. cap. licet homo
verbo. affirmat non
figari.

x In summa. tit. de
Offic. Ordinarij. c.
sunt autem.

so Institution and Destitution to themselves. And y^e elsewhere likewise he makes the enioying the Temporalities to be denoted by, *Pro rebus Temporalibus debita subiectio*. And so *Durand* (whom they call *Speculator*) in his precedent for the Libell, whereby a Monasterie hauing founded a Church, was to demand the Temporalities, thus proposes the suit, *Cum Ecclesiam illam Monasterium a fundatione habuit* (for in those ancienter times the right of Foundation of a Church and Appropriation were as ^a one to Religious Houses) & sic per consequentiam in temporalibus sibi debeat respondere, petit temporalia in ipsa Ecclesia sibi adiudicari, &c. Is it not then plaine, that *respondere in temporalibus* denotes the taking of the Temporalities to the Monasteries vse? *Hostiensis* and *Durand* are better authoritie to proue how the Law was anciently taken, then a cart-load of the later and more barbarous. Other reasons might be brought to proue this. but I presume no man will doubt it, that knowes how to examine it. I only adde this obseruation, to help cleere it, out of a Bull of Pope *Lucius* the second, to the Prior and Canons of *Kenelworth*, wherein licence ^b is given them, to hold their Churches in *proprios vsus*, that is, in *manu vestra* (as the words are) *retinere* & earum Beneficia ad proprios vsus reseruare, constitutis ibidem Vicarijs & Diocesano Episcopo presentatis, qui eis de spiritualibus, vobis vero de Temporalibus

^a Hostiens. summ. tit. de capell. Monach. §. quid tunc, & vide ill. de Primat. §. quid operetur.
^b Specul. tit. de capell. Monach. §. 2.

^a Vide Hostiens. summ. eod. tit. §. quid sit.

^b Ms. Repertorium in Vol. quo continetur Fridegod^{us} porta in Biblioth. Cottonian.

poralibus omnibus, videlicet Decimis & Obuentionibus debeant respondere, dum modo Vicarijs & ceteris Ministris earundem Ecclesiarum in necessarijs provideatis, &c. What can be plainer, then that the phrase of *respondere* in the Canons is here as it were purposely declared, as we haue conceiued it, according to Antiquitie? And sometimes also Appropriations were made by Lay men, reseruing to themselves a *ius patronatus*, and *ius presentandi*. But all the profits of receiued Tithes and Glebe were theirs, who so had the Appropriations, and were dispensed at their pleasure; and to the Curats, in both kinds, as they thought fit, were some Salaries giuen. which turnd afterwards oft time into Vicarages that belong to such Appropriations; whence also it came, that their Presentations haue been siace and are now taken to be only to those Vicarages, being made perpetuall; whereas indeed, their Vicars were originally presented to the whole Rectorie, but had the benefit no otherwise then is before declared. The words of conueyance in Appropriating commonly were, *Dedi & confirmauit Ecclesiam de N. cum decimis*, or *cum Decimatione*, &c. Whereby the Church Glebe and Tithes passed equally, by way of interest, to the Monasterie. So anciently, and at this day, manie Couents, but especially the *Præmonstratenses*, haue diuers Churches continually in their owne hands. And some of the Monks receiued
into

e Amodieu (o-
mo; Sabaudia in
Churs. Monast.
Clunias. An. D.
1015. dat. extat in
Biblioth. Clunias.
Pag 413.

into Orders, discharged the Cure. And in such Instruments (of the elder Times) as more commonly ordayned, that they should keep the Church presentative, the Church it selfe passed also it seems as well in right of propertie, as of patronage; which sometimes also (as is before noted) was excepted to the grantor. Examples enough are extant, wherein all this is apparant. For that more generall way of appropriating Tithes (the Church still remaining presentable, which specially is pertinent hither) you may see the Grants and Bulls made to the Abbey ^d of Clugny, to the Abbey of ^e S. Germans in Auxerres, and many other like recited in Pope Innocent the third his Decretals, *as also the Charter of Henry Earle of ^f Brabant to his Abbey of Afflighem, neere Bruxels; of Thierry Earle of Holland ^g to the Abbey of Egmond; which, being but a few of a multitude, enough shew the vse of the time in conueying Tithes in Appropriations seuerally, and as distinct from the Church; and more are of this nature, where we speake of the English vse. And although also, Confirmations and Bulls of Popes and Bishops are sometimes added to such ancient Appropriations (as you see in an ancient ^h Charter, by Lewis the fourth, of France; in the yeere DCCCCXXXIX. to the Abbey of Clugny, where the Appropriations of Churches and Tithes, *Sicut per priuilegium Romanum, & per*

d Biblioth. Clu.
mar. p. 1430. 1434.
e Innocent. 3. in
Epist. tom. 2. p. 433.
alibi sup. & vide
si places, Chartum
Abbat. Verulian.
apud Andream
Quercetan. in No-
tis ad Biblioth.
Clunias pag. 133.
f Apud Antverpium
Museum in Orig.
Canon. cap. 43.
ubi & B. Jda
diploma consulas.
g Apud I. Dou-
nem. Annal. Holl.
lib. 10.

h Biblioth. Clu.
mar. pag. 263.

scripta Episcoporum adquisierunt, are confirmed; and in other Monuments of succeeding Times) yet those were gotten by the Monks, to satisfie the Canons; not to giue validitie in secular or common Law, then practiced. But also some Instruments of Appropriations are, wherein, from Bishops only, Tithes of other mens Lands were conueyed to Monasteries; as in that especially of *Atbelbero*, Bishop of *Hamborough*, in the yeere M C X L I. whereby he giues to the New Minster in *Wipentborp*, then newly founded by *Vicelin*, in the Territorie of *Holst*, *eiusdem Villæ Decimam cum aliarum quarundam Villarum subter positarum Decimis*, veluti in villa *Sta- uera*, *Horgan*, *Bræbtenuelde*, *Tuentborp*, *Gode- land*, *Wlmersborp*, *Boienbutle*, *Husberg*, *Cumer- ueld*, *Padenworth*, *Witborp*, *Padensiede*, *Bullig- stede*, sed & alias Decimas iuxta fluvium *Gestere* in vtroque littore à villa *Elmesborne* vsque ad la- cum *Wicstet*, &c. with diuers other. And by another Charter, dated M C X L V I. he giues to the same Monasterie other Tithes of great va- lue; and some of his successors^A follow his ex- ample. If you question how the Bishop came to haue power to make these Grants, eyther in re- gard of Parochiall Curats by the Canon Law, or of the Lay owners interest, according to the practice of the Time; know, that in this and most of the Bishoprique of *Germanie* especially (which began with the Christianitie of the Dio- ceses,

i In App. ad Hist.
Brom. pag. 114. &
119.

i Re' d'ob. Arch.
Hamburg. 18. D.
1174.

ceses, about, or since the beginning of the French Empire) the right of Tithes, through those Dioceses, was challenged by the Bishops onely (and that iustly enough by the Lawes of the Empire, which presently are related) because the Parishes being not limited, nor indeed Christianitie so at first settled, that they could haue beene well assigned to Parochiall Curats, the Bishops were the true and immediat Parochiall and ministring Rectors in their Bishopricks. and although afterward, Parish Churches were founded, yet to them they would not resigne their ancient right in Tithes, which from their first Function there, they had eyther enioyed, or still pretended to, both in regard of the value of them, as also because euery founded Church was to be otherwise endowed with Manse and Glebe. Neither had it beene altogether safe among so obstinate a people (which could scarce by any means be brought to pay any Tenths) to haue permitted euery Parish Rector afterward to haue demanded them, or taught them due to himselfe. for to such as had both at once receiued the Doctrine of the Faith, and the declaration of the right of Tithes due to the Ministers (which were only, when they receiued it, the Bishops; if you respect only, as you must, the Ministers settled among them) it might haue seemd a different Doctrine, to haue afterward taught them due to any inferior part of the

1 Lamlart, Schaff-
naburg, pag. 17.
in Kraus, Wan-
dal, lib. 4, c. 38. c.
39.
n Vide Greg. 7.
Reges, l. 6, c.
27. 77.

Hierarchie; especially in the weaker yeeres of that Church. Hence is it, that the Archbishop of ¹ *Mentz*, claimed all the Tithes in *Turingia*, the Bishop of ^m *Lubek*, of ⁿ *Salzburg*, and others, the Tithes of their Dioceses. and hence only those of *Hamborough* so liberally dispose of them. Neither could any of these reasons so well haue place in other Countries. for (except in *Germanie*, and those more Northerne parts) Christianitie was in most places of *Europe*, it seems, so established, and the Hierarchie of Bishops and parochiall Rectors so settled, before any common Doctrine or generall Law, for payment of Tithes, was so diuulged (for a thing of necessarie obseruation) in the Church, that when it came after to be commaunded, it could not be, in any conceit, better ordered, then according to the diuision of limited Parishes. and, those wanting at the time when the Faith, and the Doctrine and Laws of Tithes, came first into those parts, how could it on (the other side) fall out, but that they should be taught due only to the Bishopriques? Which opinion also, it is no wonder, that those Bishops should be willing to preserve and continue, after Parishes were there diuided, and after Tithes came at length to be paid them. For long they preached, and much stirre was about it, before they could get a vsuall payment of them. Neither need you mistrust, that their right to Tithes, so cleerely pretended

pretended in the Appropriations by the Bishops of *Hamborough*, was onely from the Episcopall right which the Canonists allow, ° in case where the Lands, wherein the Tithes encrease, are not assigned to any one Parish Church. the contrarie thereof appears enough in other conveyances made to the same Monasterie; in which the same Bishop *Atbelbero*, first in MCXLI. appropriats to it the Parish Church of *Bisborst* vpon *Albis*, *cum banno simul & cum omnibus appendicijs eius acquisitis, vel acquirendis*, and with the largest bountie, that the thing giuen might carrie with it. but afterward, in MCXLVI. hee graunts to it also a good part of the Tithes within the Banne and precinct assigned to the same Church; which plainely shewes, that he graunted Tithes of Lands, alreadie assigned to parishes. For his Parish Churches and their profits were no other, then what Foundations, speciall Endowments, and the Offerings of the parishioners, within their Banne or Limits, had made them. Which is well iustified by an old Rimer, that in Verse, which would grieue *Apollo's* heart to heare, sings *Atbelbero's* liberalitie to the Monasterie, and expressees the Tithes of foureteen Villages, and other places giuen by him, and then comes to two Churches (that he afterward appropriated to it) *Bisborst* and *Leborst*, and names them only as they had Bannes or Limits and parishioners; as

o *Extr. de Dec.*
c. 13, *quidam*.

Bisborst

Bischorst cum Bannis, Bannos cum parochianis

Ichorst cum Bannis, Bannos cum parochianis.

And then addes,

Et Bischorstensis Decimatio tota paludis

Additur & queque fratrum labor occupat eque.

Where you see, hee diligently remembers also an Exemption giuen to it by that Bishop; which could hardly haue been, if the generall right of Tithes had not beene supposed in him. But out of these things you may probably collect, that by this time (that is diuers yeeres before the end of these CCCC. yeeres) in some of those Northern Churches, Tenths were payd more iustly, according to the desire of the Clergie, then in other places; where you shal find arbitrarie consecrations by Lay men, continuing till about M C C.. For if the Bishop had not had these Tithes payd, but had pretended only right in them, his bountie to the Monasterie had been to litle purpose. So in the Diocese of *Oldenburg*, about M C L X. payment was duely, it seems, made to the Bishop by all, sauing those which had improued the deserts of *Wagria*, which could by no means be brought to it. *Decimas ex more & soluere recusauerunt*, sayes *Krantzius*; being yet readie to giue a competent part of their encrease. And although *Gerold* the Bishop and Count *Adolph* ioyned together; the one with perswasion (wherein he pretended

tended to them *Exempla*, as the same Author writes, *Ecclesiarum omnium & præsertim proximarum*, and told them of *Diuinum de Decimis præceptum*:) the other with power, to make them tithe their profits; yet they vterly refused, and with tumult and clamors made open profession, *Seruisti conditioni nunquam se colla submissuros, per quam omne Chriscolarum genus Pontificum pressurâ laboret.* Neither were the Danes in those Ages easier to be brought to the payment of Tithes to the Church. Indeed they so much abhorred it, that no greater cause was, why they barbarously betrayed and murdered their King *Knout* the fourth, then that hee would haue imposed it. And about the yeere *MCLXXX.* vnder King *Waldemur* the first, *Absalon* Bishop of *Lunden* would haue had them all paid their Tithes, and that vnder paine of an Interdict to continue against them: but they stoutly refused, and answered by publique message to the Clergie, That notwithstanding the Interdict, they should carefully minister Diuine Seruice and Sacraments, or els depart the Countrey: if they did neither, *Non solum rerum amissionem sed membrorum etiam truncationem demorarentur.* And it is well noted by *Krantzius*, that the Northern Nations generally, were very hardly brought to pay: but after continuall and earnest Doctrine of the Church, and command of Princes, at length many of them yeelded; that is, as

1. An. D. 1078.
Krantz, Danie 4.
cap. 37. & in pref.
ad Hist. Regni
Noruag & Dan.
lib. 6. cap. 30.

may be coniectured, in the first halfe of the year
M C C. Through the frequent vse of those ar-
bitrarie Consecrations, and those *Appropriations*,
Churches with their Tithes, and Tithes of seue-
rall possessions, were in exceeding number esta-
blished in Monasteries, as well of Nunnes as
Monkes. The Tithes of L X. of L X X. or
more Parishes, were by those courses, annex
sometime to one Monasterie, which the Head
and Couent possessed, not as any part, or as pre-
tending themselues to be any part of that Cler-
gie which made vp the Euangelicall Priesthood,
or deserued them by ministring Diuine Seruice
and Sacraments to the owners. For indeed, di-
uers of these appropriated Tithes were out of
such lands as lay so distant from the Monaste-
ries, not in other Dioceses only, but also in o-
ther Kingdomes, that the owners neuer saw or
knew the Monks, or their Cloister, nor otherwise
heard of them, but by their Cellarars or Pro-
uosts that exacted payment. Whereupon it was
in time of our *Edward* the third affirmed in a
petition in Parliament, That Aliens (which by
reason of appropriations made to their Houses
beyond the Seas, or to their Priories or Cells in
this Kingdome, or the like) did so deuoure the
Salaries due to Parish Curats, and so neglect the
Diuine Seruice which they should haue taken
care for in euery Parish, that they did more
hurt to holy Church, then all the *Iewes* and *Sa-
racens*

racens of the world. Which might have been well applicable to some kind of Non-residence of Denizens also. But the religious persons iustified their consuming this Ecclesiastique revenue by reason only of their Prayers, their Tears, their Psalmes, their Almes, and the like exercises of Deuotion; beside their maintenance of Curats with arbitrarie Salaries, in the Parish-Churches appropriated to them. Which is at large seene in an Epistle of Peter Abbot of Clugny to S. Bernard Abbot of the Cistercian Order at Clareuault, about the Monks of Clugny their possessing of a large number of Parochiall Tithes. The Cistercians had made diuers complaints against them, and one was vpon this verie point, in these words: *Ecclesiarum & Parochialium, primitiarum & Decimarum possessiones que ratio vobis contulit? Cum hec omnia non ad Monachos, sed ad Clericos, Canonica Sanctione, pertineant; illis quippe quorum officij est baptizare & predicare & reliqua que ad animarum pertinent salutem gerere, hec concessa sunt, vt non sit eis necesse implicari secularibus negotijs; sed quia in Ecclesia laborant in Ecclesia viuunt. Hecero, among diuers other imputations, the Abbot of Clugny answers, and giues his reason for their enioying of Tithes, thus: *Quia Monachi ex maxima parte fidelium saluti inuigilant, licet Sacramenta minime ministrant, estimamus ipsorum primitias, Decimas & Oblationes, & queque beneficia**

[Per. Clunia. lib. 1. epist. 28. circ. 124. D. 1190. Vide, si placet, Isami, Sermon. de Magna Curialium lib. 7. cap. 23.]

cor digne posse suscipere, quoniam & reliqua populo Christiano à Presbyteris (that is, by the Curats which they maintaine) faciunt exhiberi. And another of great note before this Abbots time, pretends speciall charitie towards the poor, for sufficient reason why Monasteries and Hermitages had Tithes given them: *Ut copiosiora* (saith he) *alimenta proficiant, dantur in Monasterijs & Eremitis Decime quorumque prouentuum, & non modo pecorum sed & ornatum pariter & uorum.* The same reasons hold in iustifying of Appropriations to Nunneries, where the persons are not capable of the Ministerie. And among Examples of the Age, take this one for some confirmation, in these elder times, of the right which Monks pretended to them. In the yeere M L I X. a great controuersie fell between Meginber Abbot of Herfeildi, and Burcharde Bishop of Halberstadt, about Tithes of large Territories in Saxonie, appropriated to the Abbey. The Abbot stood vpon the Appropriation; the Bishop vpon his Episcopall right, which by the Canon Law is, and anciently was, the same with parochiall, in places not limited to any certain Parishes. The Bishops greatness with the Iudges of both Lawes, made the Abbot so despaire of successe in the Suit, that he prosecuted no further, but withall, summoned the Bishop to appeare before the Almighty in his Iudgement-seat, within some few daies

c. Petr. Damian.
lib. 2. epist. 14.

u. Epiphany. i.
anum seu Gall.
narum.

x. Lamb. n. Schaff.
naburg. in Ansal.
pag. 46. edit. ad-
gular. Videtur
etiam Fructus
Monaldi consilium
de iure Abbatis S.
Mariae & Carceribus
in Diocesi Patul-
ma apud Iob. Hen-
rich. Casar. part. 2.
consil. 46.

Chap. 6.

there to answer in the same Action; and verie soon after departed this life. Not many daies interceded, but the Bishop riding towards the Court where this Suit had depended, so dispatch some proceedings touching it, suddainly fell from his Horse very sick; and being carried into his Inne, gaue most strict charge (as one diuinely moued) that the Abbey should haue restitution and quiet possession of those Tithes for euer; and admonish them all, that were by, That who euer had been parties with him in that oppression against the Abbey, should by the like Iudgement from Heauen, suffer as he did; confessing to the two Bishops of Magdeburg and Hildenesheim (then visiting him) that he was now called, according to the Abbots summons, to answer his exaction of the appropriated Tithes, before the Iudgement Seat of the Almighty: and soon after, hee most miserably died; Vnto his Arch-priest, who had been his great Instrument in the Suit, the same yeere suddainly following him. But how euer either the vsuall practice, or this example wrought; a yeere or two after, this questioning of Tithes vpon Episcopall right (that is, vpon pretence that all Tithes of euery Diocese were due to the Bishop, as to the Rector of a great Parish; for such a right was most specially pretended by Bishops in Germany, as is already declared, and that both against Appropriations & arbitrarie Consecrations)

seccations) bred most perillous disturbances of State, and of no small consequent in those parts. For in the yeere M L X I I. when *Otbo* succeeded his brother *William* in the Marquisat of *Turingia*, *Sigisfrid* Archbishop of *Mentz*, denied him the relieuing of his Fiefs held of the Archbishopricke, vnlesse hee would giue him all the Tenths of his Demesnes, and compell all the Tenants of his Marquisat to doe the like. This was exceedingly distastd by the *Turingians*, in somuch, that they openly profest, they would sooner lose their liues, *quam patrum suorum legitima amittere*; that is, then part with their ancestrell right of detaining, or disposition of Tithes, according to their vse, either of Infeodations or Appropriations. so you must of necessitie vnderstand it; and other passages in the Author (*Lambert* of *Schaffnaburg*, then liuing, who relates it) make that sense of it plaine. Neither was this *Otbo*, for as much as in him lay, wanting to the Archbishops request. But in the yeere M L X V I I. vpon his death, hee left ioy enough to his countrey men, in regard of that his yeelding about the Tenths, which none of his ancestors had given example of. but in him it was the chiefe Seminarie, as the Monke sayes, of the many calamities suffered in the *Saxon* Warre of that time. Great disputation of Canonists followed some six yeeres after, in a Councell held, about this Episcopall right, in

Erpesfurt, where not only the Tithes of Lay men were called 7 in question, but Tithes appropriated to the Abbeyes of *Fulda* and *Herfeldt*, and of all their possessions, were challenged by the Archbishop; his Canonists vehemently disputing for him; and the Emperor *Henry* the fourth, who much invaded the rights of the Church, vrging him forward, that indeed hee might haue had a moitie with him. At length, the Abbots diuided with the Bishop by a special transaction; and, when they yeelded, the Lay men, seruing the time, agreed to giue him theirs also. But presently the exaction of them ceased. *Hoc anno (MLXXIII.) post exortum bellum Saxonicum* (sayes the Monke) *nulla deinceps exactio facta est Decimarum in Turingia; gaudentibus Turingis quod occasionem inuenissent, vt traditas sibi à patribus leges manu militari tuerentur.* And although the Archbishop againe questiond it, no successe followed. Of Appropriations of Tithes, hitherto.

IV. The vse of *Infeudations*, or Conueyan-ces of the perpetuall right of Tithes into Lay hands, is rememberd by *Peeter Damian*, that complaind of it to Pope *Alexander* the second, about the yeer *MLX.* *Insuper etiam & Decima* (saith^r he) *ac plebes adduntur in Beneficium se-
cularibus.* Where *plebes* is taken for Parish Churches, as it is often vsed in the old Canons: and they are the same, to this purpose, with parochial Tithes

7 Vide Schaff-
naburg pag. 47.

7 Pet. Damian
de 1. 1. 1. 1. 1. 1.
de 1. 1. 1. 1. 1. 1.

Tithes and Temporalities; although literally, they interpret only *laic*, that is, the *Lay people of the Parish*, or *those of whom the Cure is*; which word is often for *plebes* in the Greek Canons of the *African Church*. The Originall of the practice of these Infeodations of Tithes appears not in old moniments. Those which referre them to the time of *Charles Martell*, or any age neer him, are in grosse error; neither is any mention of them, for the space of about CCC. yeeres after him. Lands and Monasteries consecrated, were about those times of *Martell* often posselt by the *Laitie*, and often wrongfully, as the storie of him, *Carloman*, and their successors, plentifully discover. and thereof enough in the former Chapter. But no Tithes in those times were Infeodated, as also is iudiciously observed and taught by the learned *Stephen Pasquier*, Aduocat Generall en la chambre des Comptes, whose diligence yet failes, when he confidently deliueers, that these Infeodations began about the time of the holy Warres that were between *M X C.* and *M C.* The contrarie appeares plainly, not only in that of *Peeter Damian*, who liued long before, but also in the Councell of *Lateran*, held in *M L X X V I I I.* where this Canon is, *Decimas quas in usum pietatis concessas esse Canonica auctoritas demonstrat, à Laicis possideri Apostolica auctoritate prohibemus. siue enim ab Episcopis vel Regibus, vel quibuscumque*

a Vide *Kr. aux. Metropol. lib. 4. c. 2*
Vbi ad morem
Mandrabuli, con-
iecturas de hac re
infelicititer adfert.

b Vide, cum his
que supra adno-
tauimus, *Flodard,*
hisp. Rhemens. 6. c. 2
clef. lib. 2. cap. 12.
etiam in Ecclesia
Orientali Mona-
sterijs sacris Laici
saepè vsi fructi
sunt. constat in
ὁριζήματι.
συνδ. *Alexij*
Patriarchæ Con-
stantinop. edit. in
comment. Zenara,
de in Canon. 13. sy-
nod. Oecumenica 7.
c. En les recherches
de la France, l. 2.
chap. 35.

quibuscumque personis eas acceperint, nisi Ecclesia reddiderint, sciatis se sacrilegij crimen incurrere: Which in the same syllables is iterated in the generall Councell of *Lateran*, held in M. C. XXXIX, vnder *Innocent* the second. But in the first you see cleerly, that Infeudations of Tithes were ancientser then the Holy Warres: Which is plainly confirmed also by the Councell of *Claremont*, held in M. XC. V. by *Urban* the second; where it was forbidden, That Lay men should thenceforth *Altaria vel Ecclesias sibi retinere*, that is, keep Churches and consecrated Tithes in their owne hands. for so was the common^d signification of *Altaria* at that time in *France*. And obserue there withall, that they had beene practiced not alone by Lay men, but by Bishops also; as is declared in *Peter Damians*^e complaint against them for it. Likewise it seems, Religious Orders made Fiefs or Tenements of Tithes^f for Lay men. Testimonie of these Infeudations are very frequent in the Canon Law, which commonly-stiles the Tithes so conueyed into Lay hands, *Decima Laicis in feudum concessa*, and *Feudales*, and *Infeudata*, that is, Feudall Tithes, or as the French Lawyers call them, *Dixmes infeodees*. And to this day these Infeudations remaine; especially in *France* and *Spaine*, and also elsewhere. Neither are the Tithes so posselt, other then meere Lay possessions, and determinable before the secular Iudge.

P

But

d 2. 1. 9. 1. 2. 4.
quorum,

c. 2. 1. 9. 1. 2. 4.

f. 6. Decretal. 1. 1.
de Dec. 1. 2. 3. 4.

But thereof, more in the practice of the next C C C C. yeeres, in which the ancient Infeodations haue continued. But since the yeere M. C. L X X X. none could, in *France* especially, be newly created; that is, no Lay man might thenceforth begin Infeodations of Tithes parochially due by the Canons. So was it ordained in the generall Councell of *Lateran* then held, in these words: *Prohibemus, ne Laici Decimas cum animarum suarum periculo detinentes in alios Laicos possint aliquo modo transferre. Si quis vero receperit & Ecclesie non reddiderit, Christiana sepultura priuetur.* So hath the continuall practice (which in such a case is the best interpreter) since been in that Countrey, which hath received this Canon for a binding Law. Neither is it ^h otherwise to be vnderstood; how euer diuers of the later Canonists, with ignorance enough, draw it to a different sense, and oppose it against the right of all feudall Tithes, being ancients then the Councell, and since passed over into Lay hands. And whereas they commonly suppose, that all these ancient feudall Tithes were at first spirituall, and transferred from Chutch-men (at the request of Princes) into Lay hands, and since wrongfully detained; surely it is an error. neither is there any ancient warrant sufficient for it: many of them were doubtlesse created by Lay mens Grants, as Rents-charge, Estouers, Turbaries, and the like are. Who can doubt of it, that

g. *Extr. tit. de Dec.*
c. 19. *prohibemus.*

h. *Neque aliter
sanè intelligunt
vetustiores illi
luris interpretes
Foncem. 4. Ho-*
stiensis. Bernardus.
Et vide Henricum
Boetium ad tit. de
Dec. c. 19. quatuor.

that obserues but alone this Canon *Prohibemus?* Whence also may be strongly inferd, that the greater number of Infeudations were through Grants made by Lay men to Lay men, as Consecrations were, at their pleasure, made to Churches. for what is there only forbidden by the Councell, may be thought the greatest and most preiudiciall practice of the time against the profit of the Clergie. Neither is any prouision there made against the other kind of Infeudations, which passe Tithes from Church-men. And although the words & *Ecclesie non reddiderit*, in the Canon (and in the bodie of the same Councell, in *Roger of Houeden*) seeme to suppose, as if it had been made for such Tithes as had been taken from the Church; yet indeed, the truer reading is *tradiderit*, as appears in the bodie of that Councell first fully publisht out of the *Vatican*, in the last Tome of the Generall Councells printed at *Rome* by command of the present Pope *Paul* the fift; wherewith agrees other Editions, but of lesse authoritie. And perhaps also some old Infeudations were made by Lay Patrons in the vacancie of their Churches, by the same challenged right as they alone made Appropriations. For, as by our common Law, the Patron and the Bishop may in the time of vacancie dispose of the Endowments (as by the Canon Law also, if the Chapters consent, or the Popes, be had;) so in these elder times, vpon

equall reason, when the Patron had the only disposition and interest of the Church (as is already shewd) he alone sometimes granted any part, at his choise, it seems, to Lay or Clergie men. Why not any part as well as all? And that Patrons granted whole Churches into Lay hands, appears by diuers passages in *Flodoards* Rhemish historie, by that before cited out of *Damian*, and by the generall Councell of *Lateran*, vnder *Innocent* the second, where it is ordained, that they should be restored from the Lay men to the disposition of the Bishops. And an example is extant among the Records of the ¹ Monasterie of *Egmond* in *Holland*; wherein *Charles* King of *France* (who is commonly therein taken for *Charles* the *Bald*; but *Douza* thinks it to be rather *Charles* the *Simple*, and made about D. CCCC. and is thereto perswaded by Synchronisme, the best triall of such truths) recites, that *Hagane*, one of his Nobles, humbly requested of him for *Thierry* (the first Earle of *Holland*) *quasdam res: Ecclesiam videlicet Hecmunde, cum omnibus ad eam iure pertinentibus a loco qui dicitur Zwitherde Haghe vsque ad Fortrapa & Kinnem, &c.* Which by patent hee grants him in fee, *& vt libere hac omnia teneat atque possideat, habeatque de his potestatem iuxta libitum suum ordinandi seu faciendi.* If the Church is selfe of *Egmond* (the Parish Church for it was then no Abbey, but afterward made

1 Apud Zan. Des-
gam. in Amal.
Holland, lib. 5.

one by that *Thierry*) passed not by this patent into Lay hands, I sufficiently vnderstand it not, neither is it spoken of, but as what might, according to the vse of that time, be cleerly made a Lay see. Through these kind of Grants, practiced both by Lay & Clergie men, Princes, and priuat persons, the ancient Infeodations of Tithes had their originall, as well as by Leases from the Church; and not by imposition of Tenths by Princes, as some ^k haue ignorantly coniectured; although also it be certaine, that Princes sometimes ioyned ^l with the Bishops to bring in the payment of Tithes, that thereby themselves might haue beneficiall Infeodations of them from the Church. But as Princes made Infeodations out of their owne Demesnes, or their owne Churches; so other priuat Lay Persons. And the Clergie, sometimes of Tithes alreadie vested in them; and sometimes, it seems, out of their Demesnes. And perhaps especially religious persons, exempted from payment by Bulls, made some out of their owne Demesnes, as may be coniectured out of a Decree ^m of Pope *Alexander* the fourth, that speaks particularly of Infeodations made *à religiosis exemptis & alijs*. And for example of Tithes alreadie possessed, and thus granted by the Church, you may specially see that of *Engelbert* Count of *Goritz*, who had an Infeodation ⁿ anciently from the Church of *Trieſte*, in the Patriarchat of *Aquilegia*.

^k Videlicet *Kranz*,
Metropol. lib. 1. c. 3

^l *Schaffhausen*,
An. D. 1073. &
Kranz lib. 4.
Wandelaar. cap. 37.

^m *6. lib. de*
Dec. 1. c. 5. f. 10.

ⁿ *Inuentus 3.*
epist. lib. 2. p. 107.
& v. c. 1. p. 110.
Edit. Coloniae.

o Krentz, Wan-
dalia, lib. 4.
cap. 38. & 39.

p Append. ad hist.
Drevesp. 134.

q Vide extr. de
Dec. 2. 17.

r Wandalia lib. 4.
cap. 38.

s M. lib. 2. de con-
temp. mundi. in
Bibl. oth. Cotton.

legia. and *Henrie Count of Ratzenbourg* ° had an Infeodation of all the Tithes which were paid to the Church in his Territorie, from the Bishop of *Oldenbourg*. so one *Hildeward* had one in the p Diocese of *Hamborough*, and surrendered it to *Baldwin* Archbishop there, about M.C.LXXIV. But examples of them were q very many, the dislike whereof was one speciall cause, pretended by those of the Deserts of *Wagria* in *Holst*, about M. C. LXX. why they would pay no Tithes. *Præterea* (sayes *Krantzius*) & hoc adiecerunt, non multum a veritate aberrantes, quod omnes peni Decima in luxu cesserint hominum secularium. To these testimonies, of Lay mens arbitrarie detaining, disposing, or receiuing of Tithes in those elder ages, you may adde *Bernardus Morlannensis* (an English Monke of *Clugny*, about King *Stephen*) his complaint of non-payment to the Clergie. thus speaks he in his affected forme of Verses.

*Rusticus bordea, mittit in borrea, farra recondit.
Horrea grandia, vasa capacia multaque condit.
Nec pecus aut fars dante Deo data vult Decimare.
Nec sacra portio, nec Decimatio redditur aræ.*

V. The like libertie as Lay men had enioied (in not subiecting themselues to the payment of Tithes, according to the Laws of the Church, but bestowing or retaining them at their own wills

wills in most places, euen from the beginning of Christianitie, vntill about the yeer M. CC.) was another way purchased, for some time, by religious houses, so to discharge themselves of censure of the Canons, and that by *Exemptions* or *Papall priuilege*. For howeuer the Laitie iustified themselves by their secular right, admitting of Canons that toucht their estates, but as they saw cause in their own iudgments; yet Religious persons, who were alwayes of the Pontificiall side, and reckond in the Catalogue of the Clergie, and possessed diuers large Territories, durst not so oppose what was ordaind either by decree at *Rome*, or in *Synods* Generall or Prouinciall. Therefore when from the beginning of this Age, both Doctrine and Canons (of which more presently) had made the dutie of Tithes of a known right among the Clergie; Clergie men became somewhat strict obseruers of the payment, as you see plainly in that before cited out of *Godfrey* Abbot of *Vendosme*, with whom *Peeter* Abbot of *Clugny* agrees. And, although ^a Canons be in *Burchard*, *Iuo*, and *Gratian*, referd to, I know not what ancient Councell of *Chalons* or *Mentz*, whereby Lands, occupied by Bishops or Abbots, seem to be discharged; according to which also, another Decree is found in the *Vatican*, annext to some Councils of Pope *Vrbane* the second, yet it seems by the autoritie of those Abbots and other testimonie, that

a *Videtur* 2. 148.
1. c. 48. & notat
et *etiam* *Gregorius*
ad *id* *idem*

that they were not practised as Church Laws. But what some of the Clergie durst not do for the Canons, they had licence for by Exemptions from the Pope. And, beside those other Canons, from ^b *Paschal* the second, about M. C. there was granted to all religious persons, a speciall discharge from Tithes. but it seems also that this Exemption soon took not force in execution. for it was made diuers yeers before those two Abbots wrote, and (if I vnderstand them) expressly affirmed the common practice of the contrarie. And in an instrument of composition twixt the *Templars* ^c and *Præmonstratenses* in the yeer M. C. XLII. one speciall article was, that, *Nullus in vtroque ordine, alter ab altero, tam de nutrimentis, quam de laboribus Decimas exiget vel accipiet.* whence some inference might be that no cleer exemption preceded (at least in force and practice) for both. But howeuer, afterward about M. C. L. most of all the religious Orders were ^d exempted, by Pontificall priuilege, from payment out of possessions kept in their owne occupation, which Pope *Hadrian* the fourth (about that time) restrained to the *Cisterciens*, *Templars*, and *Hospitalars*, and decreed that all other religious Orders should pay Tithes of whatsoever increase they had in their own occupation, sauing of ^e new Improvements by culture, of pasture for their Cattell and of Garden fruits. But neither were they

b Extr. 219. de dec.
a. nouu. n. genus, &c.
App. Concil. Lateran.
part. 23. cap. 16

c Chron. Ord.
Præmonstrat.

d Extr. de dec. a. 10
ex parte vide
Joann. Laridorianf.
de Reg. Curialium
lib. 7. cap. 21. &c.
Append. ad Concil.
Lateran. part. 23.
cap. 1. & 10. &
part. 42. cap. 4.

e Videfis Alex.
a. 216. de dec. a. 1.
Joann. & Innocent.
1. tom. 2. p. 410.
Edit. Colonienf.

they by these exemptions, freed from payment of Tithes, which were taught due only by common right to the Church. They were discharged also from such as had formerly been consecrated out of their possessions, by their Founders or Benefactors, to other Churches, over which also the Pope challenged supreme authority in disposition of their Revenues. But the Laytie would not permit such exemptions to extend to their Infeudations. *Milnes Galliarum*, says *Peter of Blois*, speaking of the Cisterciens, *sibi in Decimationis usurpant, nec vestris privilegijs deferentes, eas a vobis potenter extorquent*. But, that of those three Orders, was afterward in the year M. CC. XV. in the generall Councell of Lateran, limited to such Lands as they had before that Councell purchased. where observe by the way, that Exemptions were then chiefly allowd to two Orders, which are not properly to be reckond amongst any part of the Clergie, or Ecclesiastique persons. For the *Templars* and *Hospitalars* were devout Souldiers only, neither could they iustifie their enjoying of tithes, either through exemption from the Pope or consecrations from the Laytie, by the reasons which other Cloister Monks vsed. Their prayers, or deuotions in priuat, were not the seruices expected from them in the Church; but their swords and valour only gaue the desert, as at this day may be truly affirmed of the *Hospitalars*

Q

OR

i Le Broc. Ad-
cas en la suite de
Playe 27.

k Vide Innocent.
3. tom 2. pag. 139.
& 410. & App. ad
Concil. Later. 2. No-
val. part. 13. cap. 2.
& seqq.

l Vide in Concil.
Mogunt. a. d. 846.
& a. d. 887.
in Concilio. Const.
lib. 3. cap. 2.

m Vide Concil. A-
guisgran. lib. 1. cap.
11. & seqq. Tom. 3.
edit. parisi. Sin.
pag. 386.

or Knights of St. Johns of Hierusalem, which
being now, as in those ancient times they were,
only Souldiers of the Church, haue therefore
been diuers times lately iudged in the Court
of Aides in Paris to be no part of the Clergie.
But also, by the succeeding Popes, other like
priuileges were granted to Bishops, Abbots,
and at their pleasure. But of the Practice of
these CCCC. yeers, thus much.

V. I. Of the Opinion left in the monuments
of the Clergy both touching the Right of tithes,
and those Practices, next briefly. Very frequent
are the testimonies in the old Councils of about
the beginning of these CCCC. yeers, in which
Tithes are spoken of as due generally by Gods
Ordinance, as *Decimas Deo dari omnino non ne-
ligam, quas Deus sibi dari constituit, quia timen-
dum est, ut quisquis Deo debitum suum abstrahat,
ne forte Deus per peccatum suum auferat ei necessa-
ria sua* which occurres in the Prouinciall Coun-
cell of Mentz held in DCCC. XIII. and is
iterated in some other succeeding of the same
Prouince, & in the Capitularies. And it is or-
dinarily grounded vpon the Leviticall Laws
(which are obuiously cited for the right of
Tithes in the very syllables of Moses) but
sometimes also on Abrahams & Jacobs examples,
as in *Walafrid Strabo*, that liud about DCCC.
XL. whose words are, *Decimas Deo & Sacer-
dotibus Dei dandas Abraham factis, Iacob promissis*

sis

si insinuat, deinde sex statuit. Et idem Doctor
sancti commemorant, the self same being Hereford
also to one of the Councils of Mentz of those
times. And res. Dominica and Dominica. sub
stantia and De mensura, and the like are the at-
tributes given to Tithes, by the ancients of this
age, which also they stile *patrimonia pauperum*,
and *Tributa gentium animarum*, and *Spendia*
pauperum, *hospitum*, *peregrinorum*, whence also
the Clergie was not to vnderstand *quasi suis sed*
quasi commendatis, as the words are of the Coun-
cell of Nantes, held about the former part of
these CCCC. yeers. And Pope Alexander the
third in an Epistle to the Archbishop of
Rheims, sayes, *non ab hominibus sed ab ipso Deo*
sunt insinuate; and in another to the Bishop of
Amiens, he calls them *Sanctuarium*. and Celestin
the third, *Fidelis homo de omnibus quas licite*
potest acquirere, *Decimas erogare* &c. after
him, Innocent the third, *Decimas Deum in signum*
diuinae salutis domini sibi reddi precepit &c. *esse De-*
cimas &c. *primicias assueverant* and his generall
Council of Lateran agrees with him. and it
appeares that Vtrique Bishop of Augspurg about
the year DCCCC. L. in his Yntications had
especially this article of inquirie, *Si Decimas*
recolantur, which shewes his opinion that they
were generally due. With these take the authori-
tie of the Penitentials exercised by the Clergie
in that Age, by which strict examination was to

a c. 16 q. 7. c. 6.

o Luit. lib. 7.
cap. 132.

p. Concil. Tiro.
quod Regatium
dicitur sub L. on. 2.
q. Agrippin. apud
Burchard. lib. 3.
cap. 135.

r. Aquilgram. sub
Stoph. 5. d. 116.
ext. de dec. 2. 26.
Nagelst. 1. 17. q.
2. 10. 1. 1. ut non
venerat ad modum

f. m. 1. 1. 1. 1.
1. 1. 1. 1. 1. 1.
1. 1. 1. 1. 1. 1.
1. 1. 1. 1. 1. 1.

r. End. 2. 1. 1. 1.
transmissa & 1. 1. 1.
1. 1. 1. 1. 1. 1.

n. Cap. 34. & ext.
de dec. 2. 33. cum
non sit.

x. Borno. abbat
in vita S. Udalrici
cap. 10.

be made as Strifes, whether the penitent had paid all kind of Tithes, in these words. Hast thou at any time neglected to pay thy Tenth to God, which God himselfe hath ordained to be giuen him, or if thou hast done so or consented to the defrauding of the Church therein, first restore to God four-fold; and then must thou suffer penance with bread and water only, for twentie dayes. So it is deliuerd in *Burchard Bishop of Wormes*, that collected the Canons about the yeer M. Neither was any difference in the nature of the increase by the common opinion of this time. The tenth of ^a all, aswell of all kind of Personall as Prediall, was taught due. Neither find I any man in this Age that by Doctrine expressly opposed any of this, saving only that *French Letardus*, who about the yeer M. held the payment of them necessarie. *Decimas ^a dare, dicebat omnimodis esse superfluum & inane.* But also other opinions he had, that being against the vsuall Doctrine of the Church, gaue him the name of Heretique, which he kept till his miserable death. This may suffice for the expresse testimonies of Opinion of this CCCC. yeers touching the generall right of Tithes. But although this opinion be so frequently deliuered in such termes as may denote the Tenth due by Gods Law, (that is, as it should at first sight seem, by the *Diuine morall Law*, or the *Diuine naturall Law*, which should bind all men and euer,

227. 2. 2. n

227. 2. 2. n

227. 2. 2. n

227. 2. 2. n

227. 2. 2. n

227. 2. 2. n

227. 2. 2. n

227. 2. 2. n

227. 2. 2. n

227. 2. 2. n

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227. 2. 2. n

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227. 2. 2. n

227. 2. 2. n

ever, and are to this purpose both one) ye it is plain, by so much of the practice of the Laitie as the Clergie commonly allowd of, and by the generall opinion of the Time, that the persons held capable of them, were not only the labouring Priesthood or Ministering Clergie. The disposition of them in perpetual right to Monks, Nunnes, the poor in Hospitalls, to religious orders of Knights, and that out of one Province or Kingdome whatsoever into any other, in this time was allowd cleerly in practice, and according to that practice they were enioied. And the Clergie also generally agreed, that, by their Canonickall forme of conueyance, Tithes might be giuen (although some ancient Canons were for Parochiall right) to any Church, to Monasteries, Hospitalls, reliefe of Poor or Sick: that is, as *luc* Bishop of Chartres (being a great Canonist about M. C. XXX.) in his iustifying the right of Tithes expresses it; *Decimas & fidelium oblationes Ecclesie* (so you must read, and so is his *Ms. copie*) *lex caritatis communicare potest non tantum Monasterijs sed etiam Xenodochijs, infirmis & peregrinis.* For, saith he, *licet Decimas & oblationes principaliter clericali debeantur militibus, potest, tamen, Ecclesia omne quod habet cum omnibus pauperibus habere commune.* But this might not be done, as they would haue it, by the Lay owner only. For he well addes, that notwithstanding no Monasterie might, by the Canons,

b *Law 4 in 2, 16.*
g. 1. 4. 45. 47.

c *Epist. 207. affipularum, c. 16. q. 1. c. 68. qui canon falso ad D. Hieronymum referunt & Concil. Claromont. An. Do. 1093. a. 1. q. 3. c. 4. & c. 16. q. 7. c. 2. d. In Bibliothec. Canonica 1761 Codex editus habet Ecclesiastica.*

e *Urban 2 c. 16.*
q. 7. 397

nons, lawfully receiue a conueyance of Tithes, *ab illis ad quos non pertinet, id est à Laicis*. yet you see cleerly that Monasteries and other Churches did receiue them from Lay men, and continually enioyd them. So that the chiefest difference twixt the Laitie and Clergie herein came to be, who should dispose or conuey the Tenth (according as they varied also about Inuestitures) not what persons (sparing in the vse of Infeodations) might haue a perpetuall right in them, and in that difference the Clergie yeelded so frequently in receiuing, allowing and confirming arbitrarie conueyances (as is before shewd) of Tithes, no otherwise then as of Houses or Glebe, to Monks, Nunnes, or Churches farre distant, that if they held them due to the labouring and Parochiall Minister (were he Bishop or other) by the *Diuine morall Law*, they did in this no lesse then commit against their own consciences, and exercise a kind of continuall and fearfull sacrilege. And indeed it appears that it was expressly held against the *Diuine Law*, to conuey Tithes to any other Church then where the owner vsed most commonly to receiue his soules food. For the Clergie in a Petition to the Emperor *Lewes the second*, in the Councell of *Pavia* in DCCC. LV. confidently affirmed that it was generally taken, that such a conueyance to another Church *prohibita* was as well *diuine* *Legi*, as *sacris Canonibus contrarium*.

But

But then clearly also, the chiefest practice of these C.C.C. yeeres was herein contrarie to the *Divine Law*; a strange imputation to lay on the time, if that *Divine Law* there, & *Deu* precept, and *Deu* constituit, & the like in their other passages for Tithes, denoted the *Divine Morall Law*. But if you so understand it, how could that *Lex Charitatis*, that *Ius* speaks of, so dispense with it? And with what colour could the Church so frequently practice against it, or pretend arbitrarie Consecrations to be so meritorious? But for an Interpretation of their meaning, by shewing how others conceive that *Lex divina* hereby look in the next C.C.C. yeeres. As for *Exemptions*; some complaints were made against them by such as lost by them; as you may see by the Monks of *Clugny*, complaining against the *Cisterciensians*, and by *Peter of Blois*. But out of them also may be collected, that the generall Opinion of the age was not, that they were due by the *Divine Morall Law*. Was *Rome* in those ancient times so bold to grant so many Dispensations expressly against the *Divine Morall Law*? Yet also *John* Bishop of *Chartres*, in those times, found much fault with the Exemptions given to religious persons. *Miror* (saith he) *ut fidelium pars laique, quodnam sit quod Decimas & iura aliena usurpare non erubescunt. Inquirent forte Religiosi sumus. Plane Decimas solvere Religioni pars est.* And more to this purpose you may

in Reg. 1. 117.
in Reg. 1. 117.
in Reg. 1. 117.
in Reg. 1. 117.

in Reg. 1. 117.
in Reg. 1. 117.
in Reg. 1. 117.
in Reg. 1. 117.

in Reg. 1. 117.
in Reg. 1. 117.

may find in him, where he tells you, that these Exemptions did *derogare constitutioni Divine*. But the Clergie generally was much against the use of *Infeodations* of Tithes and Churches into Lay hands, although it were practiced by some Bishops and Religious Houses, who committed strangely, if they were also of opinion, that the right of Tithes was due to the Priesthood immediately from the Morall Law. *Quid est enim* (saith *Peeter* & *Damian*) *Decimas in usum secularium vertere, nisi mortiferum, eis viris, quo pereant exhibere*? Hinc accidit quod & plebejani iusta detur occasio, ut Matricibus suis Ecclesijs obedientiam subtrahant, ut non eis legitima Decimarum persoluant. And *Alexander* the third directed the Bishop of *Amiens* to a decree, that a gift of a Tithe by an Abbot into a Lay hand, was void, *quoniam sanctuarium de iure hereditario possideri non debet*. But these are only against Conueyances of Tithes already consecrated to Churches, and so hallowed. But, such as were by their first creation infeodated to Laymen, can no more be accounted (in their own nature) differing from other Temporall and Lay possessions, then Rents-charge, Estouers, the tenth sheaf, or the like at this day granted in fee by one Lay man to another. Neither indeed was the Churches right (what euer it were) to her Tithes properly diminished by such Grants. for if, at this day, the owner grant

i 214. 4. 11. 12.
Vide etiam Bul.
lan. Urban. 2. 10.
Bull. Clem. 4. 12.
An. D. 1185.

k 18. 1. 1. 1. 1. 1.
ad hoc, de vide. 11.
App. ad Emul. 1. 1.
L. 1. 1. 1. 1. 1. 1.
1. 1. 1. 1. 1. 1.

1. 1. 1. 1. 1. 1.
1. 1. 1. 1. 1. 1.

grant the tenth sheaf of lands tithable, to a Lay man; may not the Grant be good, as a Charge out of the land? and yet the Church there hath her right as before. But the truth, it seems, was, that in those elder times, Lay men that had created a Tenth into Lay hands, rarely, or not at all, paid any to the Church; and those Infeodations, once made, gave them greater pretence, of with-holding what the Church demanded: as if it had been enough to say, they must not, could not, pay two Tenths out of their land; and that if a Tenth were once created to any man, nothing els might be exacted vnder the like name. The same may bee thought on in Consecrations to Monasteries. For if Tithes had been held generally due and paid parochially (as now) then cleerly, although a Lay man had granted a Tenth to another Church or Monasterie; what other soeuer had been due parochially, had, notwithstanding the Grant, still remained payable to the Parson. How could it haue been otherwise? And so no small number of doubly-paid Tithes had remained at this day.

VII. The Laws made in this time for payment of Tithes, were *Imperiall*, *Prouinciall*, and *Pontificiall*. The first of the *Imperiall*, was made by Charles the Great, in a generall assembly of Estates, both Spirituall and Temporall, vnder him, in the XI. yeer of his reigne ouer France

R

and

in *Constitutione* Rerum
edit, a Vito A-
mbrachio, cap. 7.
Loy. Longobard.
lib. 3. tit. 3. cap. 1.
Capitular, lib. 3.
cap. 123.

a. *Hist. Sacerum*,
pt. 9. can. de
Congallo. *Barba-*
mani, lib. 3. Sa-
cerdotum, *capit.*
prædij aliisque
proventibus dica-
uit. Tj Decimis
adipem viri doli-
fimus non aufus est.

and Germanie; and in the yeere of our Saviour
DCCCLXXVIII D was there ordaind, *Ve-*
musquisque *et* *suum* *Decimam* *donec*; *atque* *per-*
missionem *Episcopi* *sui* *(et* *Pontificis*), as some Co-
pies are) *dispensetur*. Which Law indeed, with
diuers other, for true payment of Tithes, were
generally made by him before his Empire, which
began not till the yeere DCCC. yet because
this was in the same termes receiued into those
Capitularies collected by *Benedictus Lemita*,
as from him being Emperor, it may well enough
be titled Imperiall, and it is the first to this pur-
pose extant, which can be at all stiled General, and
was ordaind by both powers, Secular and
Spiritual, to any whole State. vnlesse you will
beleue, that in *Scotland* a Law was established
by King *Congallus* and his Clergie, about D.
LXX. after Christ, for the generall payment of
Tithes there, according as *Hector Boetius*
hath related. *Congallus*, indeed, is by others
affirmed to haue been verie carefull for the Cler-
gies maintenance. But it will, I think, fall out to
be too bold an assertion of that faiming *Hector*,
who often, as it were, makes Laws for the *Scottish*
Kings, that hee may relate them; or else hee was
deceiued by them from whom hee took it. No
good Authoritie can iustifie such particulars of
that age there, neither is it to be receiued other-
wise then as fabulous, and proceeding out of
that common mistaking of ancient passages of
Church-

Church-revenues, and confident (but ignorant) application of them to Tithes. But from that Law of Charles the Great was that exaction of Tithes, spoken of before by *Alepin*; and thence are Tithes, in *Ansegisus* his collection of his Imperials, so frequently mentioned, as of known right; and hence also had the title of the German Bishops, before spoken of, its originall. Those Capitularies, both of *Ansegisus* and *Leuita*, were collected by them about the year D. CCC. XL. in both of which, frequent constitutions are for Tithes, and for the parochiall right also of them. Yet with them also take the constitutions of Charles the Great, about the same time collected, but published by *Vincent A-merpachius* in the year M.D. XLV. as also others occurring in the collection of *Melchior Goldastus*. These, together with the Lawes of the *Lumbards*, haue very many constitutions of about the beginning of these CCCC. years for this purpose; and one only shall suffice to be here transcribed. *De Decimis: quas populus dare non vult, nisi quolibet modo ab eo redimantur; ab Episcopis prohibendum est ne fiat: Et si quis contemtor inuentus fuerit, si noster homo fuerit ad presentiam nostram venire compellatur, ceteri vero desiringantur. Si inanis Ecclesia reseruant, que voluntarie dare neglexerunt.* This was made either by Charles, or *Leuita* the first. but it is falsely referred to the Emperor *Lothar*, in the Lawes of the

*o. de Capit.
l. 3. c. 155.*

Leuit. L. 5. cap. 46.

Lombards. It was provided you see against such as would not give their Tithes, vnlesse they were purchased of them for valuable consideration. But the effect that these Lawes had, was shorth the Lasseie soon disobeying such commands as diminished their reuenues. And in enough appears in the storie of about the yeere 9 DCCC. XLV. that little or no practice was of any of those Lawes, of the Capitularies, in behalfe of the Clergie, nothing being more frequent, then not only the denying them what they would haue had, but also the taking from them what they otherwise possessed. Nor could they haue sufficient remedie for it, either in the Councell of *Meaulx*, where, vnder *Lothar* the first, they humbly sought it, or long afterward, as is manifest in the Moniments of the succeeding ages. But by the way, whereas some (both strangers, and of our own countrey men) out of the ioint mention of *Nona* and *Decima* in those Imperi- all Capitularies of *Charles* and *Lewes* the first, fetch an example of a *Ninth* paid to the Church as well as a *Tenth*, and bring it as a character of the times deuotion; as if the Tenth had not then been thought enough, vnlesse a Ninth also, like a second Tenth, had been offered; it is a ridiculous error, and proceeds from grosse ignorance of the Common Lawes, Storie, Councels, and vse of that age. The Ninth and Tenth there spoken of, were only the rent due from the Tenants

q Vide *Baroniam*
tom. 10. *An. Do.*
845 & 846. *Flon*
deard. hist. Rhem.
Eccle. lib. 3. Iohann.
PP. 8. epist. 131.
843. 45. 263. 293.

u *idem lib. 12.*28. *Sup. cap. 5.*7. *A. D. 1059. in*Synod. *Tom. 2. c. 6.*26. *q. 2. c. 3.*28. *q. 2. c. 3.*

by the opinion of that Court it is likely they would then also haue been iudged so. And also among the ordinances^u of Cing *Machet* about the yeer M.LX. the same Autor puts one in these words, *Decimam partem Terre nascentium pastoribus Ecclesiarum libere consorto*. Many more of like nature are where we speak severally of the *English Constitutions*. For *Pontificall* decrees; *Publique monuments*; I think haue none in expresse termes of command (except you look back to that faint one of Pope *Damasus*)²⁸ ancienter then that attributed to a Pope *Nicholas* the second. *Præcipimus* (saies he) *ut Decime & primitiæ seu oblationes viutorum & mortuorum Ecclesijs Dei fideliter reddantur a Laicis, & ut in dispositione Episcoporum sint; quas qui retinuerint a Sanctæ Ecclesiæ communionem separentur*. The selfe same words²⁸ are also ynder the name of his next successor *Alexander* the second. That of Pope²⁸ *Leo* the fourth, about the yeer DCCC. L. *De Decimis, iusto ordine non tantum nobis sed etiam maioribus nostris visum est, ut ab illis tantum, ubi sacrosancta baptismata dantur, debere dari*, may be reckoned for a Canon for the right of Tithes, if you will. but it seems rather it was at first a Declaration of an opinion then a Constitution. But both the other and that, with diuers passages also out of S. *Augustine*, S. *Ambrose*, and others, and those old *Provinciall Councils*, that make for the generall right of Tithes, were

confirmed for generall Canon Law in *Gratian*

Concordia discordantium Canonum; by Pope

Eugenius the third in the year M. C. L. J. or

presently after. for howeuer some Canonists

ignorantly otherwise place the Collection of

that first part of the bodie of the Canon Law; it

is most plain that it was in that yeer collected by

him; which is best justified by a most ancient

copie of it written before the *Palre* were infor-

ted, and remaining in the *Vatican*, with this in-

scription: *Decretum Gratiani Monachi Sancti*

Felici Bononiensis Ordinis sancti Benedicti com-

pilarum in dicto Monasterio Anno Domini millesi-

mo centesimo quinquagesimo primo, tempore Euge-

ni Papa Tertij enough other testimonie is of it.

And in the Councell of *Cleremont* held in M.

XCIV. by Pope *Urban* the second it was de-

creed, *Ne laici Decimam partem de laboribus suis*

retineant. some other passages of Popes are a-

bout that time against the selling of *Tithes*;

which they call *Simonie*. And in *C. 16. q. 7. c. 1.*

after the passage of *Gregorie* the seuenth, before

cited out of his Councell of *Rome* against feudall

tithes, these words follow as if he had continu-

ed them; *Oportet autem congruentius nos Decim-*

as Ex primitias, quas iure Sacerdotum esse sanc-

imus, ab omni populo accipere; &c. which compre-

hend in them a Constitution: but neither these

or any of the rest that follow there, are in that

Councell of *Gregorie*; neither find I whence

Gratian

b. c. 11. q. 1. & c. 16.
q. 1. c. 1. & 1. q. 1.
& c. 16. q. 7. palim

e Vide prole-
gom. ad Corpus
Iuris Canonici,
auspicis Gregorij
13. editi, & c. 16.
dem V. p. 1. q. 1.

d Reges. l. 1. p. 9.
179. 14.

e Vide Marianum
de re. lib. 9. c.
14. p. 12.

Gratian had them. But an Epistle^d of that Gre-
gorie is extant, wherein among other admoniti-
ons to some Princes of Spain (after such time as
the profession of Christianitie there, was purged
of some *Gothique* corruption, by a^e Councell
held vnder Richard Abbot of Marseilles, the
Popes Legat in M L X X V I. so I vnderstand
that reference made, in the Epistle, to a kind of
new conuersion to the Faith) he perswades them,
*Decimas, quas ad vsum tam ipsorum quam Eccle-
siarum & pauperum proficiant, dare, totique reg-
no indicere. Quod quidem nulli debet graue videri,
pro meliori parte, videlicet semper victura animi,
quemque decimam Deo offerre, cum pro moritura
corpore plurime gentes coniugibus suis tertiam re-
rum legibus compellantur exsoluere.* He admoni-
shes, you see, and perswades, but commands not.
He thought not, it seemes, his own power great
enough to haue had effect in disposition of a
Tenth part of euery mans reuenuē, and therefore
abstained from command. neither could he haue
pretended the autoritie of any Law or Canon,
generally receiued into practice. for neither in
his time, nor long after, till about M C C. were
Tithes so generally paid (as since) without spe-
ciall Grant or Consecration (as is sufficiently
shewed;) neither had any Generall Councell as
yet once remembred the Dutie, or the name of
Tenths. The first of the *Generall Councils* that
mentions them, is the Ninth, that is, that of La-
teran,

held vnder *Calixtus* the second, about
 M. C. XIX. extant in the *Vatican*, and first pub-
 lish in the late Edition of the *Greek* Generall
 Councils printed at *Rome* by autoritie of the
 present Pope *Paul* the fifth, and now newly in-
 serted into *Binus* his last Edition. But they f. A.D. 1618.
 are there spoken of only, as they were receiued
 by speciall Consecrations. and in the Generall
 Council of *Lateran*, held in M. C. XXX. vnder
Innoent the second, feudall Tithes are in
 the same syllables mentioned, as in the Decree
 of *Gregorie* the seuenth, before cited out of the
 Council of *Rome*. And this also, taken out of
 the *Vatican*, is to be found only in those two late
 and fullest Editions. But of the Generall Coun-
 cels (before that Edition at *Rome*) ordinarily
 known and read, the first that names Tithes, is
 the Eleuenth, that was held vnder *Alexander* the
 third, in M. C. LXXX. But there, Infeodati-
 ons of them into Lay hands, and Consecrations
 or arbitrarie Conueyances of them to Religious
 Houses, without assent of the Bishop, are
 only forbidden. Neither was any Canon of a
 Generall Council as yet found, that purposely
 commanded payment of them; nor any that ex-
 pressely supposed them a dutie of common right,
 before that of *Lateran* in the yeere M. C. C.
 XV. held vnder Pope *Innoent* the third, about
 which time, Ecclesiasticall Autoritie became
 more powerfull, the Canons were more receiued

* Vide infr. c. 7.
 §. 1.

§ Cap. 33. & in
 extr. tit. de Dec.
 c. 33. cum un. fu.
 & vide caput
 prox. §. 1.

into practice (that before were litle, especially herein, obeyed) and Parochiall right to Tithes grew to be more established; whereof, more in the next and last part of our generall Division, and in the *English* practice. But if that Canon in the *Lateran* Councell, held vnder *Alexander* the third, against arbitrarie Consecrations of Tithes without assent of the Bishop, might be vnderstood literally, and of new Tithes so created (neither is any thing in the Councell that denies that to be the meaning of it) then needed wee not perhaps seek further for the cause of that Assertion amongst our common Lawiers, *That, before the Councell of Lateran, every man might haue giuen his Tithes to what Church he would.* Who euer obserues the practice of the preceding time only, and the words both of that Councell, and, to the same purpose, of the other held vnder *Calixtus* the second, may well enough be perswaded, that the intent of those Canons were no otherwise. But in regard wee find that Canon of *Lateran*, vnder *Alexander* the third, to bee differently interpreted by *Innocent* the third, within twentie or thirtie yeeres after the making of it, and vnderstood only of Feudall Tithes formerly granted out from the Church into Lay hands (according as the Canonists after him also take it) we cannot be altogether so secure of that other interpretation. In *Lateranensi Concilio* (saith *Innocent*; meaning, that vnder

h. 2. de leg. 2.
f. 2. de leg. 2.
f. 2. de leg. 2.
f. 2. de leg. 2.

der Alexander the third) est inhibitorium ne quilibet Religiosa persona Ecclesiarum & Decimas de manibus Laicorum, sine consensu Episcoporum recipiat; per quod indirecte datur intelligi quod sufficit consensus Episcopi, ut licitum Ecclesiis sit Decimas de manibus recipere Laicorum. Hoc autem de illis Decimis intelligimus que Laicis in feudum perpetuo sunt concessæ. But we must take it vpon his word only, and the credit of the following Canonists, that the Canon was so to be vnderstood. They may, as they will, vnderstand it by iudiciall application. but you may, at least, doubt still, that the Historicall vnderstanding of it, is to be had out of arbitrarie Consecrations before practiced. And it was euen equall to ordaine, that Lay men should not arbitrarily consecrate, and that they should not consecrate without assent of the Bishop; every Bishop (I think) being supposed a carefull obseruer of the former Canons, which would haue induced parochiall right to Tithes, and generall payment. So that what in this kind might not be done without his assent, was conceiued as likely to be neuer done to the Churches preiudice. Let euerie able reader iudge here. but let him not be much swayed with the rable of late Canonists, that goe away cleer with this of Pope Innocent. When the Pope had said so, they made no scruple of the truth of it; and one takes it (as their fashion is) from another with too much easie guidance.

credulitie. But although this be not sufficient ground for that assertion of our common Lawyers (which clearly, being rightly apprehended, is true; though lazie ignorance crie against it, even to hoarsenesse) yet enough other will be found, whereof more toward the end of the tenth Chapter.

Of the time from M. C. C. or thereabouts, till this day.

C A P. VII.

- I. The Canons of Generall Councils, and Decretals, for parochiall right in Tithes (not formerly otherwise conveyed) which now became more established.
- II. The opinion of the Canonists, in the question of what immediate Law Tithes are due by, is, what they are payable iure diuino.
- III. How the same question is determined by the opinion of the Schoolmen.
- IV. Of those that held them meer Almes.
- V. The opinion in Diuinitie, that concludes them due iure diuino. With a Determination of the Vniuersitie of Oxford touching Personall Tithes.
- VI. Lawes, Customs, and Practice of France, in exaction of them. Of their feudall Tithes at this day.
- VII. Lawes, Customs, and Practice in Spain, touching

touching the generall payment of Tithes. Tithes
where, in Laymens hands.

VIII. Customs and Infeudations in Italie;

Payment in Venice; in Germanie: Of the

Hungarians, Polacks, Swethians, and others,

touching the dutie and possession of Tithes.

IX. Of Tithes in Scotland. With an Example

of an Appropriation of Churches and Tithes

there, by Robert de Brus. And something of

Tithes in Ireland.

In these following times, the Canon Law
grew to be of more force, and Parochiall
right (through the Decrees made against
that former course of arbitrarie Conueyances,
and from the passages of Canon Law, that sup-
posed the generall right of Tithes) became to be
more established. But the Opinions of Canonists
and Divines have been and are much different
in the question, upon what Law the generall
right of them is immediately grounded. But by
the Practice of the Common Law (for so much
as I haue read) of all Christian States, they are
subiect to Customs, and that sometimes as well in
non-payment as in payment of a lesse part. And In-
feudations of them into Lay hands, yet continue
in France, Spaine, Germanie, and elsewhere.
And of Customs only and Infeudations wee shall
principally speake in the practice of this time.
For, what else might here otherwise be remem-
berd touching Complications, Exemptions, or

such like, is but a meer consequent of those Customs, and of the Opinion that makes them due only by Positive, Human, or Ecclesiasticall Law.

I. It is sufficiently manifested in the practice of the former C. C. C. years, that the Laity did usually convey their Tithes by Consecrations and Appropriations to what Church they would, and by Infeodations to Lay men. Their Infeodations were forbidden by the Generall Council of Lateran, in M. C. LXX. whence that most known Canon *Prohibemus*, before cited, was taken into the bodie of Gregories Decretals, and hath ever since been, and still is, in authority; and that also in the secular Lawes of France especially. It was in the same Council ordained, That no religious Orders should receive any Appropriations or Consecrations of Churches or Tithes, without assent of the Bishop. *Ecclesias & Decimas* (are the words) *de manu Laicorum, sine consensu Episcoporum tam illos* (that is, Templars and Hospitalars, against whom the provision was chiefly made) *quam quoscunque alios Religiosos recipere prohibemus.* This was confirmed in the Generall Council of Lateran, held vnder Innocent the third, in the year M. C. C. XV. And a Canon of the Generall Council of Lateran, vnder Calixtus the second, in the year M. C. XIX. (wherein parochiall Ministers were also forbidden to receive

a Videlicet, cap. 14.
c. 9. ad Romanos
c. 19. de Dec.
c. 19. de Prob.
c. 12. cap. 31. in
Lateranens. tit. de
tunc patron. c. 17.
nullus. & de his
quo sunt a prel.
c. 7. cum aposto-
lica.

Tithes,

Tithes of Churches, from the hands of Laymen, by Investiture especially, *Abſque conſenſu & voluntate Episcoporum*) was afterward, in diuers Epistles of Pope Alexander the third, receiued & confirmed. And although manie Decrees were before against those Conueyances, yet till these Generall Councils (vnder Alexander and Innocent) neither was the Authoritie of the Church so powerfull, neither were Epistles sent from Rome so frequent, to put that in execution, which had so been there established against that challenged right of the Laitie. But by this time, when the arbitrarie disposition of the owner was thus provided against (reference being made to the Bishops assent, that was bound to square all things by the Canons, which would haue Tithes paid parochially, and became to be much more obeyed then before) it grew frequent, to haue Decretall Epistles sent from Rome into euery Prouince, both to ratifie the former Consecrations and Appropriations, (which the Popes began also, at pleasure, to declare sometimes void, if made by Lay men alone) and also to exact parochiall payments of other Tithes, not canonically conueyed out of the Parish: and the reason sometime was added, that is, *Perceptio Decimarum ad Parochiales Ecclesias de iure communi pertinet.* and the Generall Council of M. C. C. XV. had taken it cleere, and so exprest it, that in *signum*

b Extr. de iure
par. 1. 10. 11. 12.
c de iure, c. 1.
ex frequentat. de
appud. Concil.
Latran. par. 15.
cap. 12.

c r. 16. q. 1. c. 15.
c 56.

d Vide Innocent.
3 in extr. de his
que ſc. a p. 1. c. 7.

e Extr. de dec. in
1. 2. c. 1. c. 1. c. 1.

f 112. c. 11. c. 1.
non ſi.

vnuer-

ascens the third, where also it appears, that the Archbishop had complained to the Pope, That the Land-occupiers in his Diocese vsed to divide their Tithes at their pleasure, and arbitrarily give part to the Church, part to the poor, part to their kinred, for which hee had remedie by Pontificall Decree. Hereto you may adde that of an old Councell of Tribur, in DCCC. XC. V. *Vbi quia Decimas persoluebant vniuersi ibi sepeliatur & mortuus.* As if euery man, by the choice of the place of his deuotion, in paying his Tithes, might make to his Parish. And when Alexander the third, about the year M.C. LXXX. was to answer the doubt touching Parochiall right of Prediall Tithes (that is, whether they were due *intra territorij*, in regard of the limits within which they grew; or *obstanti Personarum*, by reason of the persons, and so to be paid to the Church wheresoeuer the owner for the most part receiued the Sacrament and heard Diuine Service) he knew not how to determine it, and withall acknowledged, that although it had been often moued, it was neuer resolved. And (saith he) *cum huiusmodi quæstio temporaria prædecessorum nostrorum mota fuerit, non de terminanda, sed tantum Territorij, atq; Personarum obstanti Decimas afferentibus debere persolui, non est nobis facile certum vbi dicere.* which are the words of that Epistle; a part whereof is in Gregorius Decretals. So, that although by the

cap. 21. de offi. m.
de offi. m.

l. c. 21. cap. 2.
c. 2. de offi. m. in
Concilio ipsius.

cap. 21. de offi. m.
de offi. m. in
Concilio ipsius.

l. 1. de offi. m.
lib. 3. M. in Bi-
blioth. Constan-
tia.

cap. 21. de offi. m.
de offi. m. in
Concilio ipsius.

T Canons

n Vide C. 16. q. 1.
can. 45. & 56.

n Rer. tit. de dec.
c. 4. comm. sum.
de Append. ad
Canc. Lateran.
can. 13. cap. 12.

p De la qua si
apud. fine. conf.
c. 7. cum. de. p. f. l. c.

Canons they would have had a vniuersall pay-
ment of Tithes, and although some much anci-
enterⁿ autoritie be in that Law for Parochiall
payment, yet they had long before, and about
the beginning of this last C C C C. yeres, so
much controuerfie touching Parochiall right,
that euen thence alone you may see, it was not
so much as, in Opinion, established. Enough
more like Examples are of that time. And you
may obserue, that where Pope *Alexander* doth
by Decretall command a Parochiall payment in
the case of the Monks of *Bexley* (for so you
must read in *Gregorie*; not *Besse*, as it is in the
most polite Edition) yet his ground is, from a
vse of Parochiall payment in that particular;
without which, he had been as vncertaine there,
as he and others are in Epistles of that time. But
so farre also was the former course of *arbitrarie*
Consecrations now withstood, that not only the
Lay owner might not of himselfe consecrate the
right of his Tithes at will, but also, although the
Bishops assent had ioind with his in conueying
any Tithes (except only such as were infeodated
to him before the Councell of *Lateran* of M. C.
LXXX.) the Conueyance had been declared
void; and to that purpose only, of passing Feo-
dall Tithes out of Lay hands to the Church, was
the Bishops assent & decreed to bee sufficient.
But howeuer, through those Occumenicall and
Pontificall Decrees, a more certaintie of Paro-
chiall

chiall right was now begun; and though those
old Canonists also, Pope Innocent the fourth,
Cardinall Hostensius, and some others, about the
yeere M. C C. L X. writing on the Decretals,
took Parochiall right as a thing cleerly esta-
blished in Law, yet it is reported by some Anci-
ents of good credit, that sufficient remedie was
not fully provided against that practice of the
former course of Arbitrarie dispositions of
Tithes, till the Generall Councell of Lions,
held vnder Pope Gregorie the tenth, in the yeer
M. C C. L X X I V. in which, they say, it was
constituted, *Vt nulli hominum deinceps liceat De-
cimas suas ad libitum, vt antea, vbi vellent assign-
nare, sed Matrīci Ecclesie omnes Decimas persol-
uerent.* So Randall Higden the Monk of Che-
ster, Henrie Knighton Abbot of Leicester, and
Thomas of Walsingham a Monk of S. Albons,
tell vs; and all three of them liue but about C.
yeers from the time of that Councell, and might
so perhaps, haue had for it some ancienter Au-
thoritie from some now lost monuments. And
vpon this, doubtlesse, was that assertion cor-
ruptly related in the printed Examination of
W. Thorpe before Arundell Archbishop vnder
Henrie the fourth; where he answers, *That one
Pope Gregorie the tenth ordained new Tithes
first to be giuen to Priests now in the new Law.*
But the bodie of that Councell (which was first
publisht only in the late Edition of the Generall
Councils

q. M. 6. B. 12. 12.
C. 12. 12.

2 April. 1400.
H. 4. p. 494.

f Extat in lib. 6.
tit. de reb. Ecclief.
non alien. c. 2. b. q.
confutissimo.
c. in 6. c. 2. de
Electione, c. 13.
in generali.

Councells at Rome, and is now also in the last Edition of *Binius* hath no such matter in it. One Canon is there, specially against Alienation of Revenues of the Church by Clergie men; and another, against Visitation of them by Lay Patrons in time of Vacancie; but neither one of them, or the rest, can you extract what those Monks have related. But although they might erre in the relation of the Canon; yet, doubtlesse, they had some speciall memorie; that Parochiall right to Tithes had been but of late yeers; and sometime after M. CC. receiued into the more known and practised Law; although the Doctors so confidently before talke of it. For we must not doubt, but that those elder Canons, notwithstanding their great autoritie, were by most different degrees of time receiued into vse; and in some places, not till long after M. CC. as wee see particularly in that of the practice in the Diocese of *Palencia*, all M. CCC. XXXI. which was, that euery man, wheresoeuer hee dwelt, yet might declare himselfe to bee of what Parish hee would, and to that Parish only giue his Tithes: Which was remedied by a Councell then held at *Villadolid*, vnder William Bishop of *Sabina*; the Popes Legat; where he begins with, *Parochiarum diuisione sanctis patribus instituta certitudinem Parochianorum & Decimarum debitam solutionem inducit*. For indeed, Parochiall payment regularly was now grown,

growing by the Canon gaining force, by both
only *Libertate Valant*. The next authority is of a Ge-
nerall Councell for Parochiall right (after that
of *Larany* wherein yet nothing directly con-
tained it; but rather it is supposed to be of former
times in the Condemnation; In the Councell of
Constance of *Wirkleses* assertion. That Tithes
were meeke Almes; and that parishioners might
ad libitum sume (as his position was) as *anferre*
propter peccata suorum. *Prælatum* and *Band* since
that, in the Generall Councell of *Trident* under
Pius the fourth; about M. D. L. X. this Canon
was published: *Non sunt ferenda quæ varijs tra-
ditis Decimis Ecclesiæ obsequantur et subditi
motibus; aut qui ab alijs solvendo remota com-
pant. Si in rem suam vertunt, tam Decimarum so-
lutio debet esse Deo. Et qui eas dare noluerint au-
daces impetitioni res rationis invadunt. Præcipit
igitur sancta Synodus omnibus cuiuscunque gradus
et conditionis sint; ad quas Decimarum solutio
efficitur; ut eas (ad quas de iure tenentur) in posse-
rum Cathedrali aut quibuscunque alijs Ecclesijs
vel Personis quibus legitime debentur integre per-
solvant. Qui vero eas aut subtrahunt; aut impedi-
unt; excommunicentur; nec ab hoc crimine; nisi
plena restitutione secuta; absolvantur.* For Popes
Decretals of this time; I referre you further to
the Laws made or received in England.
II. In the Opinions that have been since the
beginning of these CCC. yeeres, touching

De Decimis
cap. 12.

Tithes; the chiefest to be observed here, are those which determine, by what immediate Law Tithes are payable. For how euer very many other questions, about the dutie of them, are vsually disputed, yet resolve but this, one way on the other, and most of the rest that follow, about Customes, Appropriations, Exemptions, and such more, will soone haue little doubt. This point hath been controuerted both betwixt Canonists and Divines, and between Divines and others of their own profession. The Canonists (except very few) with one consent grounding themselves vpon the letter of some of those passages of Provinciall Councils, of Fathers, and of Popes, before rememberd, generally deliuer, that Prediall and Mixt Tithes are due to bee paid *iure Diuino*, which is commonly taken for the *Divine Morall Law*, and they vsually cite also the Leviticall Precepts, to iustifie it. Yet doe they allow the right of former Tithes, Canonically seized by Consecrations, Appropriations, and Exemptions also, for the most part. for to those they require Pontificiall Confirmations, or a supply of them, by such prescription of time, as may suppose them. For they take this Ecclesiastique revenue to be no otherwise due to the Clergie by common right, but that the Pope (whom they to the utmost maintaine, as they haue reason; for out of the Popes autoritie, first came their generall profession, as it now remains one) may

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as a Supt. Secward of the Clergies main-
 nance, dispose of this or that particular part of
 it. This is their common Opinion, although
 some, in the Point of Exemptions, have made
 scruple. But where none of those speciall Titles
 preceed, there they clearly agree also, that by
 common right, all Prediall and Mixt Tithes are
 due parochially. Neither need the Rector in
 his Libell upon his *Actio Confessoria* (which is
 the generall name of such Actions) as lie for de-
 mand of incorporall rights, as with vs, our *Quod*
permittat, *Quare impedit*, *Droit d'auouson*, and
 the like. I propose more, then that the increase
 is within his Parish, and the other Titles (if any
 be) must be shewd in the Exceptions or Answer.
 But by the way, though the Doctors commonly
 suppose the Action for Tithes to be *Confessoria*,
 and grounded upon common right, yet that
 great and ancient Lawier, Bishop Durand, or
Speculator I would haue them demanded by the
Condicio in Canone, that is, as we call it, by *Actio*
in upon the Statute. The Canons whereupon he
 would haue it grounded, are those passages of
 S. Hierome and S. Augustine in C. 16. q. 1. c. 65.
 C. 66. and hee takes for his authoritie, why this
 kind of Action should be brought, that of S. Pau-
 l^{us}, out of the Imperials, *Si Obligatio lege noua*
introducitur, non Cuius eadem lege, quo genere
actionis experientur, ex lege agendum est. So that
 as ex lege in the Imperials, so ex Canone in the
 Pontifi-

u. *Speculator* lib. 4.
 par. 1. q. 1. de Dec-
 re. Prius Par-
 or. *Crusade* lib. 1.
 c. 11. q. 1. p. 1.
 u. 19. alij p. 1.

u. *Speculator* lib. 4.
 c. 1. q. 1. de Dec-
 re. Prius Par-
 or. *Crusade* lib. 1.
 c. 11. q. 1. p. 1.

Bontificially Law, this Action should be brought. He liud long since, and perhaps, in regard of the various practice that had preceded against the common opinion of his profession touching the common right, he thought it most secure for the plaintife, to ground his Libell vpon the Canon, rather then vpon common right. But for *Personall Tithes* (which yet they agree not all to be *due iure Diuino*, although *Pope & Innocent* the fourth make it a wonder to see any man denie it, and diuers of them follow him; the old precedents also of Libells in *Spain* &c. being equally for thesey as for prediall) they are held payable only to the Church; where the owner; for the most part, receiues the Sacraments and Diuine Service; not where the gaine is made: neither in them is any regard had to the parish. Whence it comes, that *Monks* and *Regulars* (because they haue no personall vse of the Euangelicall Ministerie) are to pay none by this Law, saving in case where they hinder the continuall paymēt of some former personall Tithes due from Christians. The best Auctoritie they bring for personall Tithes, is that in *Deut. XII.* where *Tithes and the offerings of yoke bands* are spoken of. By reason of that most received ground amongst them; That the Tenth is due to the Church *iure Diuino*; their most common opinion is also; that euery man is bound to pay the whole Tenth, or the value of the whole Tenth;

Y. Adair, P. A.
with, & al. Parish.
extra significant.

E. Panormit. & gl.
 ad c. tua nos, tit.
 de Decimis.

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of all encrease, notwithstanding any custome or prescription to the contrarie. Indeed, no reason is, that a custome should take away what God had immediately, and, by his Morall Law, established. The consequent is good, were the antecedent clearly proved. But some of them, and such as are of no small name, deliuer their Law to be only, that custome cannot wholly discharge any Land of Tithes, but it may diminish the *quota*, or bring them to a lesse quantitie, or value; that is, that a custome to pay a Twelfth, Twentieth, or lesse, is good. This some also allow only in customes immemoriall, which they suppose to haue the force of a Papall priuiledge or exemption. But their common and receiued opinion is, that in Prediall and Mixt, no prescription or custome to pay any lesse part or value then the Tenth, or *de modo Decimandi*, much lesse *de non Decimando*, can be good. (Which well agrees with the Ciuill Law also. For by a rescript of the Emperor *Anastasius* ^a, no prescription may be of non payment of all or a lesse part of Tributes, Subsidies, or other Rents of the publique Treasurie; that is, of such things as are due to the Emperor in *signum vniuersalis Domini*, as Tithes are supposed to God and his Ministris.) Except only, where the certaintie of some equall yearly payment, without regard to euery annuall encrease, may be adiudged to be equiualent to a Tenth, by reason of the incertaintie

a C. tit. de Prescrip. 30. vel 40. ann. l. 6. comparis sed & vide ibid. Bald. Cyn. & Salsicium.

b *Gl. & Pau-
tan. ad c. in ali-
quibus extr. de Do-
cuna, alij.*

c *Petr. Rauenn.
quod Maiorem in
fimo. 3. diff. 37.
quod. 36.*

d *Varian. resolut.
lib. 1. cap. 17.*

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taintie of sterilitie or fruitfulness. In this case they allow a Custome, although the Tenth of euery particular yeer be not paid; because, *Ecclesiastice*, they say, *poteſt ſe habere ad damnum vel Licetrum* indifferently. But thoſe other common opinions of theirs are ſo frequently obuiouſ, that to cite Authorities for them, were but to imitate *Rablais* his *Bridoye*. Yet wee may ſpecially remember, that the Doctors of the *Rota* (of *Rome*, I think) according to their profeſſion alſo about 60. yeers ſince, determind, *quod quota Denaria eſt de iure Diuino hodierno die*. But ſome Canonists withall are, and thoſe of no ſmall note, that agree, the determination of the Tenth to be only *de iure Eccleſiaſtico*, and that no more *Iur Naturale*, or *Diuinum Morale*, is in it, then what commands a competence of meanes to be giuen to the Prieſthood. So *Couaruuas*; ſo, ſome others. But few enough are of this opinion. All that are of it, make no doubt of the right of Cuſtomes (provided alwayes, that a ſufficient reue- nue be poſſeſſed by the Miniſter) but allow the payment of them to be diminifhed or taken away by Cuſtome or Preſcription. But they are generally againſt the poſſeſſion of *Feudall Tithes* held by Lay men (which they ſuppoſe, but falſely, to haue all had beginning from the Church) although Infeodated before the Councell of *Lateran*. Yet indeed ſome of them expreſſe an allowance of them; but that is rather in ming-
ling

ling common Law's with their Canons, then writing as Canonists. The common Laws of all Nations (where feudall Tithes are; and I thinke certainly, in all Christian Nations feudall Tithes at this day are found) allow them now, and suffer the Canons to haue no power ouer them. And thence is it (lest they should grossely determine against such possessions as the Church anciently, as well as the Laitie, had by Infeodations setled, and Posteritie still maintaine) that some receiue into their Conclusions an admittance of what their own profession abhorres. Which may not be amisse said also of such of them as maintaine a Custome in the *quota*, or the like. For that is done rather by strining to conformance the Canons to the common Laws; or secular Constitutions of the State where they liue (as our Ciuilians, in the practice of the ancient Canon Law, do here also) then by iudging according to the bodie of the Canons, that regularly allow no sufficient exception against parochiall payment of the whole prediall Tenth, but only Papall autoritie, or a Title canonically setled in some other Church. And the better to make these Infeodations stand with their opinions, they haue also a vsuall distinction of *Ius percipiendi*, and *fructus Decimarum*. The *Ius percipiendi*, they say, cannot be transferd, nor euer was, by the old Infeodations, because euery lay man is incapable of it. but the *fructus Decimarum* only, as they teach, is

what passed, and is still possessed, in consideration that the possessors should defend the Church from Heretiques and Tyrannie. The summe of what the old Canons haue, both against ancient and new Infeodations, is in the former Chapter noted; and according to them, how that distinction will hold, I see not. But, among them, great opinion is also, that all Feudall Tithes are to be restored to the Church, and that he which holds them, may not lawfully passe them ouer to another Lay man; but may only, with assent of the Bishop, giue them to some Church. *Nec multum refert quæ Ecclesia habeat dummodo extirpentur à Laico*, as *Panormitan* sayes. And to this, they abuse that Canon *Prohibemus*, of the Councell of *Lateran*, that was not indeed made against Tithes then infeodated, but only against new Infeodations, as Pope *Innocent* the fourth there well teaches. For, saith he, *Non loquitur de Decimis infeodatis, sed de alijs male detentis*. Which iustifies what is in the former C C C C. years, against the receiued Interpretation, deliuered.

III. The *Diuines*, of since the beginning of this time, haue had their seuerall Determinations and Doctrines vpon this point, and those may be, for method, put chiefly in a Three-fold difference; although rather the second Doctrine (as presently will appeare) were but an issue of the first. and the chiefe question among them comes to this, Whether, by Gods immediat

Morall

Morall Law, the Euangelicall Priesthood haue a right to Tithes, as to their Inheritance, in equall degree, as the Lay man hath to his Nine; or if they haue them only as by human Positiue Law, and so giuen them for their spiritual labor? that is, in brief, Whether by originall distributiue Iustice, or by commutatiue, they are payable? although, in the Opinion which wee shall here make the third, all Positiue or human Law be, for the most part, neglected; whereof, more presently. But in that (which we here make the first of those three Opinions) it hath been held, that the Tenth considered *quoad quotam partem*, or, as it is, a determined part, and denoted from that number, is due only by Law Positiue and Ecclesiasticall; but, *quoad substantiam suam*, or *Cleri sustentationem*, or in regard to it, as it denotes a necessary or competent part of the maintenance of the Clergie, that is due by the *Diuine Morall Law*. And to the purpose of this distinction, they interpret the Leuiticall commandments of Tithes; and deliuer that *quoad substantiam suam*, or as it was generally for the maintenance of the Ministerie in the *Iewish Church*, it is *Morall* or *Naturall*, there being (according to consideration of it so farre) the very Character of it written in the Tables of mens hearts; that is, that Spirituall Laborers are to be rewarded with temporall bountie, as euery laborer is worthie of his hire. But *quoad*

quotam partem, it is, they say, a Iudiciall (or Ceremoniall, as some will) and that it hath been brought into the Law of the Gospell by Ecclesiastique Doctrine & Constitutions (both which we have before related) proceeding from it only *per vim eius exemplarem*, or by imitation of the *lewish* state, ordered by the Almighty; and not in that regard *per vim obligatiuam*, or any continuing force of it vnder the Gospell. And that the Church was not bound to this part, but freely might as well have ordained the payment of a Ninth, or Eleuenth, according to various oportunitie. This is commonly taught by the old Schoolemen, *Hales*, *Aquinas*, *Henricus de Gandauo*, *R. de Media Villa*, *Cardinall Caietan*, and diuers others; (but fullest, in my iudgment, by *Ioh. * Maior*) and maintained by great men, that in our times follow their wayes of disquisition. The first that expressely made this distinction, was that *Alexander Hales*, that liued about M. C C. X X X. and thus ^f determind, *Præceptum de Decimis est præceptum Iudiciale, vnde non est dicendum Morale, quia secundum suam determinationem* (that is, *secundum quam partem*) *non est scriptum in corde hominis, nec Ceremoniale, quia non est datum principaliter in figuram significationis, sed Iudiciale quia datum simpliciter in rationem equitatis mutue distributionis, ut sit equalitas dati & accepti inter seminantem spiritualia & dantem temporalia, secundum quod possibile est, &c.*

e *Ad 1. 3^{mo}.*
dist. 37 quæst. 36.

f *Per. 3. 4. 51.*
memb. 3.

&c. And *s. Aquinas*; *Determinatio Decimæ* § 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.
partis soluenda est autoritate Ecclesiæ; and adds,
 that the ground of it, which he calls *radix*, is the
 text *h.*, *If wee sow vnto you spirituall things, is* h. Epist. 1. ad Ca.
rimo. cap. 9. 11.
it a great thing, if wee reap your carnall things?
 The same is by *Hen. de Gaudano* ¹ exprest in
 these words, *Adueniente Lege Euangelicâ & ces-*
santibus Ceremonijs, cessauit & solutio Decimæ,
pro quota illa: sed mansit pro illo quod in illa erat
iure Legis Naturæ, & ad illud reduxit Lex Euan-
gelica. And deliueers accordingly the right of
 them to be *partim de iure Naturæ & Euangelij*,
 that is, *quatenus vacantibus Diuino Ministerio*
communiter ab omnibus debet prouideri; and, *par-*
tim de iure humano Ecclesiastico, or Positiuo, that
 is, *quoad quorundam partem.* And to the same pur-
 pose, the rest. But whereas some make that lear-
 ned *Hales* the first Autor of this doctrine;
 doubtlesse they erre. For howeuer *Lex Diuina*,
Deus Præcepit, and the like, frequently denote
 the right of Tithes in the former CCCC. yeers;
 yet first consider, what is there admonished tou-
 ching the practice of the time, and from thence
 you may, perhaps, interpret their meanings to
 be otherwise, then as they are commonly (and
 especially by the Canonists) taken. Could the
 Church haue, before his time, held cleerly, that
 the Tenth was due by the Morall Law, and yet,
 against their owne consciences, generally, giue
 way to, and practice also, those Conueyances,
 which

which can haue no power ouer that which the Morall Law, euer binding vniformely, hath ordained? And indeed some great Doctors teach, that the *Ius Diuinum*, denoted in those passages of the bodie of the Canons, was no otherwise vnderstood, then only that we are bound to it by the Law Positiue of the Church, imitating the Diuine Iudicials (which retaine still, as Cardinall Caietan teaches, their *vim exemplarem*, though not *obligatiuam*) and is well enough thence stiled *Ius Diuinum*. Cum ergo dicitur (sayes the Cardinall *) *Lege Diuina, aut Deo iubente ad Decimas tenemur; intellige exemplariter*. Neither doth he otherwise interpret other passages of the Fathers, which are to that purpose. *Neque aliud*, are his words, *sancti patres intellexerunt*. and remember also, that those Fathers affirme it not in disputation, but only in exhortation to the people; which is specially obseruable to any that knows the course of their writing. With Caietan also (in that the Law for Tithes is not Morall) Bellarmin, Suarez, Malder Bishop of Antwerp, and late professor at Louain, and others accord, and make it the *communis opinio Theologorum*; and some will haue it Ceremoniall, rather then Iudiciall. but wee dispute not thereof. But also an example is brought out of S. Ambrose his vse of *Quadragesima diuinitus constituta*, denoting the Ecclesiastique commandement of Lent, that was but in a kind

h. Ad 2. 2. q. 87.
art. 2.

1 Videtur 1. Maior,
ad 4. sent. dist. 15.
quæst. 2.

of

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of imitation of our Saviours abstinence. Which
 shews, that what is from the holy Word exem-
 plarily taken, is denoted sometimes with such
 attributes, as might signifie a Morall Constitu-
 tion. And the truth is also, that *Ius Diuinum* is
 very often, and was, about the time of the bodie
 of the Canon Law published, taken for *Ius Ben-
 eficium*, or *Ius Civile quod ad Ecclesie admini-
 strationem spectat*: as you may plainly see in an
 Epistle of Alexander the third, that liud till M.
 C. LXXX. where he directs, that a Church ha-
 ving been in possession XL. yeeres of Tithes
 growing in another Parish, should haue them
 still by that prescription, because in such case
*de iure diuino & humano melius est conditio possi-
 dentis*. Who sees not, that he there vses *Ius Di-
 uinum* for Positive & human Law of the Church?
 What hath the prescription of XL. yeeres, or
 primer possession to do with the direction of Di-
 vine Morall Law? Or indeed, if he had meant,
 that Tithes, *quoad quotam*, had been due for the
 Ministers Salarie by the Diuine Morall Law,
 how could prescription haue had place against
 it? Part of that Epistle is in the bodie of the
 Canon Law. But because it is fuller, and indeed
 more authentique, in a verie ancient Copie of
 Decretall Epistles (the most of them being of A-
 lexander the third) it shall thence be hither faith-
 fully transferibed. Alexander Mauricio Episcopo.
*Ad aures nostras, & significante, peruenit, duas Ec-
 clesias*

X

English

Epistle of Alexander the third

in Epist. de Pres-
criptione ad aures

in Po. M. lib. 5.
de Beneficentia
Canonica.

o. Locus eius a
Rationem extinguit

p. Per. 3. 9. 51.
memb. 3.

clesias sepius sub examine suo litigare super Deci-
mis quas una Ecclesiarum in alterius Parochia
XL. annis possedit, ac per hoc perit eius actio-
nem extinguit. Altera vero volens eas iure Para-
chiali evincere, prescriptionem non debere sibi ob-
esse proponit. Ideo quid iuris sit in hoc casu, tua
nos duxit fraternitas consulendas. Tunc itaque fra-
ternitati literis presentibus innotescit, quod iure
divino & humano melior est conditio possidentis,
quoniam quadragenalis prescriptio annorum pro sui
actionem seclat. Et sic, that the divine was in
that sense taken in these Ages, appears also by
Hales; where, although the before held clear-
ly, that the commandment of the *quarta pars* was
judicially, yet he says, that Decima sicut Domi-
ni Generalis consue is payable iure divino, that is
plainly (in his meaning) by the Ecclesiastique
Constitution of the Church, imitating the Di-
vine Iudicials. Neither was the phrase other-
wise used in that of the General Councell of
Lancaster, held before the time of Hales, in the
year M. CC. XV. *Alte quippe Decime necessa-
rio sunt solvenda, que debentur iuxta legem divina vel
loco consuetudine approbatam*. I know the Cano-
nists miserably wrest themselves about the inter-
pretation of that place, but, when they have done
all in mistaking it, could the Councell think, that
loco consuetudine, some were due, yet that all *lege
divina*, taking it for the Morall Law. for, if any,
then all, by the Morall Law. Clearly then the

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Chap. 7.
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English & of that was, *Those are necessarily to be paid, which are due either by the Positive Law of the Church* (which extends not alwaies universally) *or Customs of the Place.* Some refer that *ex consuetudine* to personall Tithes, supposing them due only by Custom or Positive Law. And that also might be a tolerable interpretation, if at the time of the Councell such a distinction had been receiued twixt personall and prediall. But can it then stand for truth, that *Hales* was the first that brought this opinion of the *quota* being due by human determination in the Church, and not by the Diuine Morall Law? Indeed he was the first that accurately disputed the question as a Schooleman, and expressely made the distinction, but cleerly not the first that so held the point. To the former Testimonies hereof, adde that of *Hugo de S. Victore*, who liud neere C. yeeres before *Hales*. He speaking of payment of Tithes before the Law, vnder the Law, and since, concludes with, *Primum igitur ante legem, paruulos Consilio nutritiuit (Deus) postea sub lege exercitatos precepto tentauit. Nouissime sub gratia perfectos in libertate spiritus ambulare permisit.* By this first Opinion of the Schoolemen, to which the ancient Fathers are (you see) by some of them squared, no difference is to be made of Prediall, Mixt, and Personall Tithes, how euer some scruples about that difference, haue been needlessly

q. B. Item, etiam
optime interpre-
tatur, lib. 2. de
Cler. cap. 26.

r. Vide Henric.
Bowie in 11. de
du. c. peruenit.

f. Henric. Theolog.
lib. 1. part. 12.
cap. 4.

handled by them. For *quoad substantiam Decima*, or *Decimam sustentationis*, as they call it, or, as the laborer is worthy of his hire, both are equally due. The Morall Law, according to them, designes not our reall possessions to be more subiect here to the naturall part of commutative iustice, then personall profit. And therefore also *Alexander Hales* aptly determines, that *Decimam personales quam praediales sunt in precepto*, that is, both *quoad substantiam*, but neither *quoad quoram*. And, that in *Venice*; and other such Cities, where no Prediall Tithes are, a Personall Tenth is due by the Positiue Laws of the Church, as, in them also, a sufficient maintenance is to be had for the Clergie, by the Morall or Naturall Law. In summe, by this opinion, Customes of payment of lesse, of nothing, and other Ciuill Titles, that haue force against Ecclesiastique Law Positiue, are allowd, so long as the maintenance of the Minister be otherwise competent. Both failing, then is that defect to be supplied (notwithstanding any Ciuill exception) due by the Diuine, Naturall, or Morall Law; which, inscribd in all hearts, admonishes, that reward is due to euery laborer; much more to him of the Spirituall Haruest. Other questions about Tithes are disputed in the Schoolmen. but it is not hard to coniecture, how the most are to be determined (according to them) by their resolution of this alone; therefore I omit them.

You

You see how opposit this Opinion is to that receiued among the Canonists, twixt whom and the Schoolemen ¹ was vsually great dissention. It is not to be doubted, but that the Schoolemen lookt much further into all that they medled with, then the Canonists could do. And had the Canonists agreed herein with them, they might, with fewer absurdities, haue maintained diuers of their scrupulous Positions. And some of ² them were so moued at the Schoolemens Disputations, about *Hales* his time especially, that they knew not which way at all to determin it. This difference of the Canonists and Schoolemen is rememberd by *I. Maion*. *Theologos hic* (saith ³ he) *Canonistae Hereticos vocant, quia dicunt Decimas non esse de iure diuino*. But which are here the more competent Iudges of the two, he tells you further, in his answers to *Peeter of Rauenna*, a Canonist of his time. He liued about C. yeers since.

IV. The second Opinion in Diuinitie, is of those, that (hauing their first ground out of the determination of the Schoolemen) held Tithes to be *meere Almes*, and not to be paid to the Ministers of the Gospel by any Parochiall right, as a necessarie dutie to the Euangelicall Priesthood, but that they might be retained and disposed of at the owners will, especially if the Pastor ⁴ well performed not his function. Of this, were both some of religious Orders in

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their

¹ *Orhem. lib. 1. dialog. 3.*

² *Raynolus apud Hostiensium in summ. tit. de decimis, num. 10.*

³ *Ad Rom. 3. dist. 37. quæst. 34.*

⁴ See *29th helms* complaine to the *X. and Parliament* art. 3.

their Preaching, and also others opposit enough to them in Doctrine. The *Dominicans* and *Franciscans* especially (who began both about the year M. C C. X. and had in their Monasteries store enough of Schoolmen) made it a gainfull Doctrine to teach Lay men, that they were not bound to pay their Tithes to their Ministers, as to whom, by any Law of God, that portion necessarily belonged. For when the determinations had preceded, by which the *quota* was concluded, not to be due *iure diuino*, they of this side neglecting (for the most part) the positive and human Laws made for them, and regarding only the expresse Law of God, taught them due only as Almes, or as what *debito charitatis*, not *debito iustitie*, was to be dispensed. By this Doctrine the *Mendicants* especially often got them to themselves (like the old * *Eustatbians*) as Almes to be arbitrarily disposed of to such as took any spirituall labour. as also made their own detaining of them in Lands, out of which they were Parochially due, to seem the lesse wrongfull. but against their detaining of Parochiall Tithes a Canon was made in the Generall * Councell of *Vienna*, held in M. C C C. XL. and their Doctrine was taxed by Pope *Innocent* the fourth about M. C C. L. writing * upon the Decretals, where he calls them *isti noui Magistri*, & *Prædicatores qui docent*, & *prædicant contra nouum & vetus Testamentum.* and *Richard* Arch-

* Vide *Zonar. in*
Concil. Gangr.
Can. 7.

* *Clementin. tit.*
de Decim. c. 1.
Religios.

* *Ad extr. tit. de*
Paroch. c. ult.
Senisfianis.

Archbishop of *Armagh*, complains against them for possessing the people with an opinion that the command of Tithes was not Morall, but only Ceremoniall, and not to be performed, by constraint of conscience, to the Minister; and that out of whatsoever at least was given to any of the foure Orders of Mendicants, no Tithe was in conscience to be deduced for the Ministers. with these in substance did others also at the same time agree, that otherwise were opposit to the whole Nation of Friars. as with vs *John Wiclese*, *Walter Brut*, *William Thorp*, and some such more whose Arguments for their opinions are at large in *Foxes Acts and Moniments of the Church of England*, whither I had rather send the Reader then stuff this place with them. *Wiclese*'s Position (for ^d which as for an Heresie some haue been since questiond with vs) is before related, as it was condemned in the Councell of Constance. and *Thomas Walden* the Prouinciall Gouvernour of the *Carmelits* in *England*, about the end of the time of *Henrie* the fourth, wrote against him in it, vindicating the dutie to the Church, but not so much, *secundum quod am sed magis secundum substantiam*, as his own words are. Hereto may be added one of the articles of the *Bohemians*, published about *Q. C.* yers since, wherein a Divine right to Tithes since the *Gospell* is denied. whereupon also they long since took all temporalities from their

b *In de Regis. Co-
ratorum. & vide, si
placet. Alex. lib.
4. cap. 60.*

c Et videfis in
Fasticul. rer. expo-
sitorum, pag. 143.
in *Wiclese* Testi-
bus.
d 20. Hen. 7.
fol. 17.

e *Doctrinal. fol.
100. l. 1. 2. Artic.
34. p. 64. & 65.*

f *Par. in Hen. 5.
pag. 602.*

*Joh. Major in
Sent. 3. Dist. 37.
q. 36.*

*h. Paul. Gryllus
apud Camill. Ro-
m. in Consistorio
par. 1. consil. 45.
edit. à I. Baptist.
Casare.*

their Ministers, and brought them to stipends. Others haue been possesst with this conceit, and among them you may remember *Gerardus Sa-
garellus*, before *Wiclese*, burnt also for an He-
retique. And the great *Erasmus* gaue the com-
mon exacting of Tithes by the Clergie of his
time, no better name then Tyrannie. But that of
his, diuers haue sufficiently both reprehended
and confuted, and especially *Albertus Pius Car-
pensis*, in his labour against him. With this may
be reckond that of *William Russell* a *Franciscan*
who vnder *Henry* the fift had publicly preache
that the payment of personall Tithes to the Pa-
stor, were not in Gods Commandement; but
that it was lawfull for euery Christian to dispose
of them arbitrarily to charitable vses. but of him,
see more in the next and third Opinion, where
the words of his Doctrin are exprest in a letter
from the Vniuersitie of *Oxford*, to the Conuo-
cation of the Clergie.

V. The third Opinion is of those who agree
with the *Canonists*, that the right, of the quota of
Tithes, immediatly is from the *Morall* or *Di-
uine Naturall Law*; some impudently vrging
with a commandement giuen to *Adam*; others
of them prouidently restrayning all their argu-
ments to such grounds for the Conclusion, as
may be had out of *Abrahams* example, referd to
the application of it in the Epistle to the *He-
brews*; but others also not so circumspectly, ta-
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king in the *Leuitical* commandements of Tithes
 for their most sufficient autoritie. For the first
 kind that talk of *Adam*; I think indeed that in
 the time of this light of learning, none haue
 durst venture their credits vpon such fancies,
 yet, that it was some opinion that had at least in
 pretence many autors in the Church of *Eng-
 land*, in the blinder time of our ancestors; I
 thence collect, for that in a *Penitential* made for
 direction of Priests in auricular Confession, and
 written (as my Copie is) about *Henrie* the sixth,
 the Priests examination and aduise vpon the
 point of Tithing, is thus expressed. Hast thou
 truly doo thy Tithings and Offrings to God and
 to holichirch? thou shalt vnderstande that at the
 beginning of the worlde, when ther was but oo
 man, that is to sey, *Adam*, God chargyd him that
 he sholde truly of al maner thyng giue God the Xth
 parte, and bad hym that he sholde teche his chil-
 dren to doo the same maner, and so forbe al men
 into the worldis ende. And forasmuch as ther was
 that tyme no man to receiue it of hem in the name
 of holichirch, and God wolde not that thei sholde
 haue but IX parties. Therefore he commandid hem
 that of euery thyng, the Tithes parts should be
 brent. I fynd that afterward *Adam* had two
 sonnes *Cayme* and *Abell*; *Abell* tybed truly and
 of the best. *Caym* tybed falsely and of the werst:
 at last the fals Tyber *Cayme* slough *Abell* his
 brother. for he blamyd hym and seyde that he ty-
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shed euell, wherefore our Lord God accurſed Caym
and al the erth in his werk. So ye now ſe that falſe
tything was the cauſe of the firſt manſlaughter that
euer was. and it was cauſe that God curſed the
erthe. it is literally tranſcribed as I find it. that
writing of Cayme for Cain is ordinarie in the
moniments of that age, as you may find in *Wick-*
leues works, *Waldenſis* his Doctrinal, and others
of like nature. But ſee here the effect of per-
uerſe oppoſition on both ſides. Some Friers,
providing only for their own wealth, would
haue had them reckon meer Almes, and ſo haue
gotten them from the Secular Priests. and others
would haue had them retained by Lay men. The
Secular Priests on the other ſide would rather
inſtruct the Laitie with ridiculous falſhoods (in
the termes whereof they would not ſpare to a-
buſe the holieſt Name) then not ſeem to ſay e-
nough for their own gain. In thoſe times they
did ſo. they ſaw the Friers dangerous doctrine
to their reuenues, and therefore omitted no ar-
gument, no courſe in oppoſing it. a notable te-
ſtimonie whereof is had alſo in that of Frier
William Ruſſell a *Franciſcan* that in the Con-
uocation of 5. Hen. 6. was vehemently accuſed
becauſe he had preached, that Perſonall tithes
were not neceſſarily payable by Gods Comman-
dement, but that euery man might diſpoſe them
at his pleaſure in charitable vſes. the ſumme of
which was, that euery man might or ſhould ra-
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i. En. Arth. in
Arch. Cant. hauſu
W. C. Arth. Duck
LL. D. in vita
Th. Chicheley Cant.
antiquiſt. pag. 73.

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ther giue them to the begging Friers. a doctrine of no small prejudice to the Secular Priests, if once publicly receiued. This *Russell* was by the Conuocation enioyned to recant at *Pauls Crosse* on a prefixt day, before which he fled the Kingdom; and after publique citations against him, was solemnly pronounced an Heretique for it. his opinion also being condemned by both the Vniuersities. the letters then sent to the Conuocation, from *Oxford*, both shew the determination of that Vniuersitie on the point and the particular Tenet also of *Russell*. therefore we insert them. the direction is to the Clergie of *Canterburie*-Province from the *Vniuersitas studij Generalis Oxonie*, after which follows a preface in generall termes against such as forsook the ancient waies and fell into new heresies. then they go on with *Sed quia in multis nouitas* (so are the words of it, as I haue it faithfully transcribed * to me through the courtesie of my most honored friend M^r. *Thomas Allen* of *Glocester Hall*; whose name it were not without offence in me, at all to mention without speciall reuerence, aswell to his singular humanitie as to his fulnesse of learning & worth in good Arts) *Sed quia in multis nouitas parit pericula, in quibus antiquitas non peccabit, illud esse censemus inconcusse tenendum quod ab antiquis patribus constat clarissime presinitum. Verum quia nuper nobis innotuit cuiusdam nouelli* (that is of *Russell*) *insana doctrina*

* Ex Archivis
Oxon. in Biblioth.
Bodleiana.

L. Facimus.

doctrina contra Decimas personales (cuius miramur
audaciam & dolemus insipientiam) sed eius perti-
naciam & Ecclesie contemptum sustinere veremur,
& ne nostra taciturnitate seu negligentia tacito
consensui adscribatur, in ipsa materia scribere cu-
rauimus quod concordēs sentimur, & in euidens te-
stimonium nostro sigillo communire deorauimus, ad
veritatis dilucidationem & obsequium Ecclesie,
ut tenemur. then they deliuer theit determinati-
on thus. Dicimus & firmiter conceipimus quod
Decime personales tam ex praecepto iuris diuini
quam sanctorum Patrum traditionibus sub auctori-
tate Ecclesie in concordia iuris iudicio debentur Ec-
clesiis & earum Ministris Curam animarum ha-
bentibus & Sacramenta ministrantibus ex auctori-
tate Ecclesie. Magna namq; est sacro Sancta Ec-
clesie auctoritas extra quam fides plane perpendit
nullam posse peruenire salutem fidelibus. Ne illis
ergo resideat spiritus pestilens aut opinio corrup-
pens ubi locus queritur fidei Orthodoxae, verba per
aduersarium premissa nostrae sententiae praedicata,
quae etiam sub Avaritia subtili furore deprehendimus
palliatas, reprobamus & tanquam erroneas & he-
reticas declaramus. Quorum demens tenor cum re-
probo sensu sic sequitur, Catholica damnatione ful-
minandus. Decime personales (this was the do-
ctrin of Frier Russell) non cadunt sub praecepto
diuino, saltem ut soluantur Parochiali Curato;
quare licet vestrum vndeique, nisi consuetudo in
contrarium fuerit, in pios vsus pauperum eas di-
stendere.

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stentare. Et iterum. Personales Decimæ sub diu-
 no non cadunt præcepto neque iure debentur, ubi so-
 lutionis non est consuetudo. But they thus damne
 it. Quisunque hanc sententiam tenuerit, & perti-
 naciter defenderit apud reputationem nostram He-
 reticus est censendus, & quia à sana doctrina Ec-
 clesie est diuisus, à corpore eiusdem Ecclesie, velut
 membrum putridum, est præscindendus. O honora-
 bilis fratres & Domini, O vniuersitates Catholice,
 & quicunque fideles scrutamini Scripturas, Ca-
 nones inspicite ac eorum naturales concipite ratio-
 nes. quam proditorium est tributum negare altissi-
 mo? quam inhumanum à laborantibus abstrahere
 debitum? quam graue schismatis exemplum autori-
 tati Ecclesie publice & pertinaciter resistere? ac e-
 tiam iustitie obuiam contra præcepta Canonum res
 alienas invadere: nimis cruenta ac sacrilegia est hec
 auaritia quæ antiquissimi iuris Decimale debitum
 solum Consuetudini adscribit, & in dubium re-
 vocat ut laborantium victum iuste exhauriat. quod
 Ministris Ecclesie ad eorum honestam sustentatio-
 nem firmum persistet si Decimæ possint ad libitum
 conferri & ius Decimandæ ex Debito non esset? O
 utinam aut respiscant & ad Ecclesie gremium re-
 deant, qui tanto facinori favere conantur; aut a-
 speris censuris, ne simplices inficiant, mordaci-
 ter feriantur. Sic vniuerses in vera doctrina Ec-
 clesie permaneamus ut ad eam tendere valeamus,
 de quo canit Prophetæ. Querite Dominum & con-
 firmamini, querite faciem eius semper. sic latetur

cor querentium Dominum bñ in via, quatenus ipsum querentibus dignetur esse merces in patria, Amen They were, me thinks, somewhat vehement and very confident in the point. Neither haue I elsewhere seen so great autoritie against *Russell*. If *Russell* were therefore an Heretique, doubtlesse he hath had and now hath many fellow-Heretiques. for thus, many, nay the most of such as most curiously inquire herein, and diuers Canonists also that are for the morall right of prediall and mixt Tithes, denie that personall are otherwise due regularly then as custom, or Law positue (which is subiect to custom) directs. But iudge you of it, Reader. I only relate it, and return to their prosecution against *Russell*. at length news came that he was at *Rome*, whither presently the Conuocation sent agents (to whom they allowd for an honorarie salarie, a farthing out of euery pound of Church livings) that might there question him before the Bishop of *Rome*. a delegation of the Conisance of the cause was made to a Cardinall, who adiudged him to perpetuall imprisonment vnlesse he recanted. the Frier afterward brake prison and ran home again, where at *Pauls Crosse* (when nothing els could satisfie the secular part of the Clergie) he solemnly abiured his heresie, as they calld it. and to preuent the like in the doctrin of other Minorits, *Chicheley* the Archbishop enioined them all that in their publique Sermons they

they should teach personall Tithes to be due by the Laws of God and the Church. Of later time others haue written for the diuine right and generall dutie of Tithes. you may see *Albertus Pius Carpenis* against *Erasmus*, *Baronius* in his digression touching them, others, but especially the diuers Treatises written to that purpose of late by our Countrie men, which are read in euerie hand. I purposely abstain from particular mention of their names. But neither haue only single autors been lately of that side for prediall and mixt. whole Synods also of this age haue in expres words been for them, through whose autoritie & this ancients before rememberd they might haue fortified their Conclusions with far greater names, then by citing some one or two late single men, as they vsually do. To omit the Councell of *Mentz*, held in the yeer M. D. XLIX. where it is deliuered that *Decima debentur iure Diuino* (and some other are to that purpose in the *Decreta Ecclesie Gallicane*, collected by *Bochell*) In an Edict of *Henrie* the second of *France* in M. D. XLII. relation is of a remonstrance made to him by the Bishop, Dean, Canons, Chapter and Clergie of *Paris*, wherein they take it cleer, that tithes and first fruits were introduites & instituees de droit diuin & partant deussent estre payes Loyauement & sans fraude. The like, of the Clergie of the Diocese of *Troyes*, is mentioned

in *Adrianum*
Christi 75.

a *Edict* & *Or-*
donnance du
Parlement, 4.
tit. 22.

in

in an edict of Charles the ninth, in M. D. LXII. in the same words, and in the year before by a Generall Synod of all the Clergie of France at Poissy, a complaint was made with that pretence in it. the words of the Edict best shew it, Charles &c. à tous ceux qui ces presentes lettres Verront, salut. De la part de nos chers & bien amies, consiellers, les Archeuesques & Euesques de nostre Royaume et des deputez des Clergez, qui ont este naguerez assemblez a Poissy par nostre commandement; nous a este remonstre, que combien que les Diximes & Primices, qui sont leur principal reuenu, soient introduites & instituees do droit diuin, & partant deussent estre payees loyaument & sans fraude: ce neantmoins plusieurs Agricoles, proprietaires, &c. with these may be reckond, that of the Clergies petition in the ^b parliament of 50. Ed. 3. wherein they begin with *Licit Decima filue, presertim cadue, de iure diuino & ecclesiastico Deo et ecclesie sit soluenda, &c.*

VI. But Although by this Opinion and that of the Canonists, Tithes be generally due by the diuine Law, and so not subiect (if with them you take it for the diuine morall or naturall Law) to Ciuill Exceptions as Customs and Prescriptions, of discharges or of paiement of lesse, or such more, whence also reall compositions haue been condemned *quia Decime cum temporalibus non sunt commutande*, as the words of an old Pope were to the Bishop of Cusa; yet the practised

Com-

^b Rot. Parl. 50.
Ed. 3. an. 199.

^c Appell. ad
Concil. Lateran.
part. 4. cap. 1.

Common Law (for by that name, as *common* is distinguished from *sacred*, are the Civill or Municipall Laws of all Nations to be stiled) hath never giuen way herein to the Canons. but hath allowd customes, and made them subiect to all ciuill titles, Infeodations, discharges, compositions, and the like. Of *Compositions* no more shall be spoken, seeing they consist rather in individuals, then of any generall course. we only remember them here as one kind of discharge, among other that haue been allowd by common Laws. and where Customes, and Infeodations hold, no man can doubt of the lawfulnessse of Compositions. But of *Customes*; in the Edicts made by those Kings of *France* vpon those remonstrances it appears, that, what euer the Clergie supposed by their *Dixmes introduitres* and *insituees de droit diuin*: they complain of abuse only in due paiement of Tithes out of lands *suiets & redeuables aux dits dixmes &c.* that is, subiect and liable to the paiement of Tithes. neither in other words do the Edicts and their verifications giue them remedie. And notwithstanding that it were once (according to sundrie Canons of that Church) thus commanded by an old Law of the year ⁴ M. CC. XXXVIII. made by S. *Lewes*, *Decime quibus fuit longo tempore ecclesia per malitiam inhabitantium defraudata, Statuimus & ordinamus quod restituantur citius, & amplius laici decimas non detineant sed eas habere*

a Edict & Orde.
Marsen tom. 4.
pag. 493.

here clericis permittant; yet, in that state, against the whole course of the Cannon Law in this kind, they haue, what by reason of ancient Infeodations still continuing, what through customs, allowed diuers lands to be not at all subiect to any Tithes payable to the Church. For their *Infeodations* (although none can be there new created) such as were made before that Canon *prohibemus* of the Councell of *Lateran*, held vnder *Alexander* the third, are to this day remaining, and are conueied and descend as other lay inheritances; excepting only such, as being discharged of feudall seruice, haue been giuen in to the Church. For, their Lawiers with the common opinion (but erroneously) suppose that all such Infeodations came from the Church; and therefore they agree if any feudall Tithes be conueied into the Church freely by themselves (not as annexed to other fiels, as castles, or manors, nor subiect to tenures reserued) that then they are in the Church, as it were *iure possumini*, or as we say, by way of remitter; that is, they are so annexed, that they may not be transferd againe into Lay-hands, more then any other Tithes which are the ancient reuenue of the Church. whence it hath been adiudged also in the Parliament of *Paris* in the case of the Bishop of *Baieuz*, that Tithes so conueied are not subiect to the custome of *droiet de Retrai et lignagier*, that is, the right of the heire apparants redeeming an inheri-

e Videffs Guide.
nom PP. Diss.
278. & Consuet.
Dumouss. tit. 10.
de Custumes pro-
diales, §. 12.

¶ Vide Carol. Mo-
lin. de Consuet. Pa-
ris, des Fiefs §. 67.
pag. 1294. & 1299.
Et Bertrand. d. Ar-
gentre in Consuet.
Britan. art. 266.
pag. 1224.

¶ I. Louin Paris.
Placit. Curialib.
tit. 5. §. 2.

Chap. 7.

inheritance sold by his ancestor within a yeer and a day, or some such certaine time. But this point of remitter, they ground not so much vpon the nature of the Tithe, as vpon an old Law of S. Lewes, wherein libertie is giuen that all persons *Decimas percipientes in nostra terra, & in feudis mouentibus mediate vel immediate de nobis quas clerici perciperent, si eas laici non perciperent, possint eas relinquere, dare & alias quocumq; iusto titulo, & licito modo ecclesijs concedere tenendas imperpetuum, nostro vel nostrorum successorum assensu minime requisito, &c.* whereas (by the way) som of their lawiers^b say, that feodal Tithes there purchased by Clergie men, are at this day subiect to the *doiēt de nouueaux acquests* i. a kind of fines for alienation, which I could not yet learne how it well stands with this of S. Lewes. But they commonly interpret it as an ordinance to this end, that when the Church (the Parish¹ Church only to which they are supposed to haue been due) had gotten them free by sale or gift or otherwise, they should be perpetually annext to it. and were it not for this ordinance, which interpretation hath thus applied, their Lawiers ought to haue enquired more carefully about the originall of euery Infeodation. for, where it began from a Lay-man, there, what cause is of remitter? And these kind of feudall Tithes also of their own nature are meer Lay possessions and determinable in that kingdome, only before the

Z 2

secular

b. *Etiquel des
droits de Domanie
tratt. 4. part. 3.
chap. 30.*

i. *Voyez l'ordonnance
sur les Tithes
1623. chap. 35.*

Code de D. eff.
lib. 1 tit. 10. deff.
35.

Code de D. eff.
lib. 1 tit. 10. deff.
35. 17. 2.
voyez Papeau
de laire vol. 2.
de la. fol. 351.

secular Iudge, as it appears, not only in an old Ordinance of *Philip le Beau*, touching the iurisdiction of Tithes, and in the Protocoll or Register of the Chancerie of *France*, but also in a late Arrest of the Parliament of *Paris*, where a Curat sued before an Officiall for his *Canonica portio* (which hath been there sometime & adjudged the fourth part. but is arbitrarily determined) against some other Churchman that enioied the Tithes of the Parish, who pleaded to the iurisdiction; that the Tithes were feudall, and desired that he would not hold plea of what so much belonged to the Kings Court; but the Officiall first gaue sentence that the Defendant should bring in his proofs of the Tithes being feudall; which failing, he proceeded to the point of the Action. thereupon by *appel comme d'abus* it came into the Parliament of *Paris*, which after solemne Argument gaue & iudgement that the Officiall had vsurped ouer the Royall Iurisdiction, in that he had at all proceeded after the simple allegation of Infeodation, which alone binds the hands of the Ecclesiasticall Iudge that hath no more power to enquire of the infeodation or of Tithes as feudall, then of any other Lay inheritance. and in the same case, reference is made to some other iudgments of like nature: and the reason giuen in the Arrest is mainly, because Tithes of their own nature and originally are not otherwise spirituall,

rituall, or belonging to a spirituall Court, then only as they were annext to a Church or some other hallowed place. *La raison est*, are the words, *que suivant le doctrine de S. Thomas, nous Tenons qu'en la loy de grace, les Dixmes sont deues non de droit diuin, mais positif; & l'esglise en naissant n'a este faict Dame de ce droit, ains par le don & concession des Rois, Princees, & autres a qui de droit il appartenoit.* whence, if they were annext to any Church, they were of Ecclesiasticall iurisdiction that was given anciently for them; but being as feudall inheritance, although they once were in the Church, yet a new Character of being meer Lay is restored to them. Those ^a Infeudations of Tithes are there very frequent, and in very many Parishes the Tithes are taken only by Lay men. But for them, so much. *Customes* in payment and non payment of the Tenth, have euer held in that Church, which might alone be proued out of some passages in Gerson, and in ^b *Iohannes Maior*, who tells vs that *plurimi in Italia & Francia de multis rebus quotam non dant.* But it may more fully be manifested by Edicts of late time. in one of Charles the ninth, and another of Henrie the third, *Dixmes se leneront selon la Coustume des lieux & la cote accoustumee in iceux. Et ou la dit Coustume sera obscure & incertaine, sera suiue celle des lieux circonuoisins.* The French Customes (according to diuers vsages of their Prouinces) are frequent

^a *Bertrand, d. Ar. contre la Conf. Br. art. 264. des Appropriations pag. 211.*

^b *Id. fol. 3. d. 37. qu. 36.*

e Videſis Guidonem Papam Decif. 234. Cade dei de off. l. 1. tit. 10. diſf. 7.

d Ad Edict. Henr. 2. contra datat paru & abus Curia Remensis.

e Cade dei Decif. l. 1. tit. 17. Decif. 3.

f Reſtitutione iſſe Couaruias l. 1. de Reſtit. cap. 17.

frequent for paying a leſſe part then the Tenth, and cleerly allowed * by diuers Iudgments. Neither is the Canon Law, which allows not Cuſtoms, ſuffered to be there practiced. And for cuſtomes of paying none or *de non decimando*, in ſome caſes they hold there alſo; and that by force of that *Lex ſanigerata* (as Du^a Molin calls it) their *Philippine* which is an Ordinance made by *Philip le Beau* in M. C C C. I I I. (but it is falſly and diuerſly referd to other of their *Philips*) commanding that no new exaction ſhould be made of Tithes not accuſtomed to be paid. *Senefcallus* (it ſaies) *ad requisitionem conſulum locorum quoruncunque, defendat ipſos conſules & vniuerſitates & ſingulos à noua impoſitione ſeruitutis facienda per Prelatos & alias perſonas Eccleſiaſticas, & à noua exactione decimarum & primitiarum & preſtationis paſſate, prout de iure fuerit & hactenus eſt conſuetum fieri.* By this autoritie, whereas in the Pariſh * of *Brantel*, in the Dioceſſe of *Meaux*, the Prior and Couent de *Noſtre Dame de Vaurat* purchaſed certain Land that had formerly paid Tithe: Corne to the Rector, and made fiſh Ponds in it, the Rector afterward was bard in his Action for Tithe of the fiſh; and one reaſon was vpon this *Philippine*, becauſe no ſuch Tithe had beene vſed to be paid. ſo in *Auuegne*, in *Berry*, and other Prouinces, ſome cuſtomes of * non payment hold good. And ofttime the King there ſends commands groundd

vpon

upon this *Philippine*, that new Tithes not vsually paid should not be exacted by the Clergie. *Litteræ* (saith & my Autor) *dictum conceduntur in Cancellaria Regia super nouis decimis, ne a Laicis exigantur per eorum Prelatos, quæ fundantur in ordinatione Philippi Pulchri Francorum Regis facta die Veneris ante Cineres, anno M. CCC. IV. Cap. XXI X. huius tenoris, Item quod Senescallus &c.* And expressly the customs of *h Berry*. Item *par la Custome, disme est doibt paier seulement des choses d'ont est accoustume payer Disme, &c.* where *Boerius* saies, he hath seen it accordingly for other places often adiudged at *Paris*. and in an *Edict* of 10. *Hen. 4. of France* touching the payment of Tithes by those of the reformed Religion, the payment is commanded only, *selon l'usage & coustume des lieux*. and accordingly diuers Arrests of Parliament also have been. And although somtimes Customes haue beene there disallowd, especially *de non decimando*; yet that hath proceeded chiefly from the vsurpation of the Canons, where the secular Law was wrongfully neglected; as you may see in the example of that of the Ecclesiastical court at *Rbofne*, wherein the Laitie were compelled *ad reddendas Decimas de sano & aliquibus alijs de quibus apud eos in consuetum erat reddere decimas*, as *Maiores* words are, who concludes, that had the Iudge been other then a Canonist, he would not so haue adiudged it.

Constitution de Philippe le Bel, l. 1. c. 12.

h Tit. 10. des Coutumes, p. 11.

l. 1. p. 11. des Coutumes, p. 11.

l. 1. p. 11. des Coutumes, p. 11.

VII. In *Spaine* also some infeodated Tithes from ancient time are in Lay hands, which the Clergie about M.C.C.C.LXXX. would haue had into their reuenue, vnder *Iohn* the first of *Castile* and *Lions*; but could not. and in an Ordinance of the same *Iohn*, against all such as should vsurp the^a right of Tithes, a prouiso is that it should not extend to such Tithes or Church Reuenue, as the Crowne or any subiect had from ancient time enioied. And a third part of Tithes due to the King, is menciond in their^a Laws, as graunted to him from the Pope, of which, at his pleasure new Infeodations are made. And *Petrus* *de Lorca* remembers, that the Pope *Regibus Hispanie concessit tertiam partem Decimarum & alijs secularibus absq; consensu singularum Ecclesiarum.* among these you may reckon those Tithes in the Crowne, which by graunt from the Pope, King *Ferdinand* and Queene *Isabel* had in the Kingdome of *Granado*, in consideration of their endowment of Churches there. and of them and their iurisdiction, whereto they are subiect, thus^a *Couarruuias* an excellent Lawier of *Spaine*. Semel, saies he, ex literis regis vidi Decimarum causam tractari inter Ecclesiasticos apud Granatense Praetorium, ex eo quod Reges Catholici *Ferdinandus* & *Elisabeth* Decimas huius Regni Granatensis obtinuerint a Pontifice Maximo cum onere dotandi Ecclesias. that is, the Iudges held plea of them
by

^a P. Matth. ad
Gail. Pop. Relf.
2. 8. ex. 1. 1. 1.
Ioh. 1. R. Castella.
Et vide Pet. Bellu-
gam in Spec. sit. de
Decimis.
^a Ordinanza
Reales de Castella
lib. 1. tit. 5. leg. 1.
6. 3.

^a Recopilacion por
Philip. 2. lib. 1. tit. 9.
6. Gregorio Lopez
in Parado 1. tit. 30.
leg. 11.
y in 2. 2. D. Thom.
di. put. 40. memb. 1.
num. 16.

^a Prælio. quæst.
sep. 35.

by Commission from the King; not by spirituall power, which otherwise regularly hath conifans of Tithes; although another great Lawier^a of that Countrey denie that the Conifance of such Tithes lawfully belongs to any other iurisdiction then spirituall. Neither hath the Canon Law been so powerfull there, as to make Tithes payable against Customes, for paiment either of a lesse part, or none. And howeuer in an Ordinance of the yeer M. CC. XCIV. *Alfonso*^b the ninth, published his *mandamos y establescemos por siempre, que todos los bombres del nuestro regno den sus diezmos derechamente y cumplidamente a nuestro Sennor Dios de Pan y de Vino y ganados y de todas las otras cosas que deuen dar derechamente segun manda sancta yglesia*, wherein he seems to establish, that whole Tithes without any Diminution should be alwaies paid to the Church, of Corne, Wine and Cattell and all other things (which Ordinance also is exemplified and confirmed by *Iohn* the second of *Castile*, and *Ferdinand* and *Isabel*; and accordingly, *Alphonso Diaz de Montaluo* his glosse on it, makes it to be consonant wholly to the Canon Law) and the whole course of their ancient bodie of the Law, in their *Partidas* be agreeable with it, yet the practice in that state hath been and is, that if suit be commenced in the spirituall Court for new Tithes, formerly not accustomed to be wholly or not all paid, and such custome or pre-

^a *Gregorio Lopez*
ad *Partida* 3. tit. 4.
leg. 17.

^b *Fuero Real a*
Espanna lib. 1. tit. 5
y en *Pragmaticas y*
leyes recopiladas por
mandado de los dros.
Ferdinand e *Isa-*
bel.

c *Prælit. quæst.*
35.

d *Alfonso de A-*
zevedo in Reg. Cat.
lib. 1. tit. 5. l. 9.

e *Constit. V. ar.*
Regim. lib. 1. c. 17.

scription be pleaded, and the Officiall or Ordinarie allow it not, vpon complaint to the Kings Court, the defendant shall (as in case of Prohibitions in England) haue his remedie. This is declared by e their *Couarruias*. *Erit*, saith he, *obseruandum, causam Decimarum quandoque in his regnis* (that is, France and Spain) *tractari apud regios Auditores; nempe cum Laici contendunt Decimas ab eis exigi, quæ legitima Temporis præscriptione* (which is vsually thought should be immemoriall, and so is their^d practice; although the most common time in other things be XL yeers) *minimè debentur, & sunt remissæ; denique conqueruntur contra morem & consuetudinem Decimas ab eis exigi. nam etsi condemnentur à iudice Ecclesiastico nihilominus, ex querela, causa, retinetur apud Regia Prætoria. Siquidem & litteræ Regiæ passim dantur à supremo Senatu ad id vt Laici non cogantur Decimas illas soluere quæ solui legitima temporis præscriptione non consueuerunt.* And with him agrees *Alfonso de Azevedo*, that writes vpon their *Ordennanças Reales*. But these kind of their prohibitions are grounded vpon their Ordinances, forbidding *Decimas à Laicis exigi, quæ per consuetudinem contrariam non consueuerunt solui*, as *Couarruias* sayes; and to that purpose was an Edict^e of their Charles the first (Emperor de fift) at Toledo in M. D. XXV. and another like of his at Madrid about three yeers after, and before foure yeers were

were thence past, at Segovia, and another at Villadolid. And vpon these oftentimes (sayes Alfonso de Azuedo) Writs of Prohibition go out to the Ecclesiasticall Iudges, that proceed *super nouitate*, to forbid that *similes non permittant nouitates*, & *processum cause Regio ipsi senatui originaliter mittant*. Which agrees with the verie words of the Ordinances, that speak of *Nouedades* in exaction of Tithes against custome. And one speciall vse is there, that the Kings giue their Personall Tithes to their own Chaplains attending on them.

VIII. Neither hath the Canon Law wrought otherwise in *Italie*, but that there also particular Customes, as well of *Non Decimando*, as in the *Modus*, are frequent. *Multis Italiae locis* (sayes Caietan^b) *contingit ex consuetudine*, that nothing at all is paid. And so is the practice there, for the most part, at this day. the Parish Priests beeing sufficiently maintained by Manse and Glebe, and the reuennues that are in some places paid, as according to a *Modus*. And of the *Italians* and others, where like Customes were, *Aquinas* thus; *Haud laudabiliter ministri Ecclesie Decimas Ecclesie requirunt, ubi sine scandalo requiri non possint propter desuetudinem vel propter aliquam aliam causam*. In *Venice*, sayes *Panormitan*, *non in vita sed in morte soluuntur Decima personales de omnibus mercantijs iocalibus & alijs mobilibus*. And in the whole Seigniorie

f Recopilacion de las leyes por mandado de Philip. 2. lib. 1. tit. 3. l. 6.

g Partida 1. tit. 20. leg. 11. & 11. l. 1. & 11. l. 1.

h Ad 2. a. q. 27. ar. 1. fo. 4. l. 1. 37. ar. 1. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

k Vide si placet. Henric. Brouille ad. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

in Francist. Mo.
naldus in part. 1.
Confl. 46. num. 57.
edit. I. Baptista
Celsus.

of *Venice*, as my Author delivers, no Parish Church hath through that name *Decimas* seu *ius Decimandi*, but only another Stipend or *Quartissum* (as they call it) *de possessionibus seu terris consistentibus intra confines eorum cura*. Neither have *Infeudations* of Tithes into Lay hands been lesse known in *Italy*, then elsewhere. For example, you may see the case of the *Mury*, a Noble Familie of *Piacenza*, who had by immemoriall prescription and confirmation by Bulls, an ancient Infeudation of all Tithes growing in the Territorie of *Verano*, within the Diocese of *Piacenza*.

in Maria Angul.
sola ed. diff. part. 1.
Confl. 49. 50. 51.

in Maria Angul.
sola ed. diff. part. 1.
Confl. 49. 50. 51.

in Conf. Sicul.
lib. 1. tit. 7.

in Maria Angul.
sola ed. diff. part. 1.
Confl. 49. 50. 51.
in Maria Angul.
sola ed. diff. part. 1.
Confl. 49. 50. 51.

in Maria Angul.
sola ed. diff. part. 1.
Confl. 49. 50. 51.
in Maria Angul.
sola ed. diff. part. 1.
Confl. 49. 50. 51.

By the Ordinance of *Frederique* the second, about M. CC. XX. in the Kingdomes of *Naples* and *Sicily*, a command is, That of all profits belonging to the Crowne of those Kingdomes, a whole Tenth should be paid, and that every subject should truly pay all such Tenths as had been vsed to be paid in the time of *William* King of *Sicilie*. *Subiectis* (are the words) *nostris indicimus, ut Decimas quas de feudis & bonis suis antecessores eorum predicti Regis Guilielmi tempore prestiterunt, venerabilibus locis, quibus Decime ipse debentur, cum integritate persoluant.*

In *Germanie*, the Canonists note a Custome, that *pro Decimis solvunt certas mensuras siue Coloni aliquid recolligant, siue non.* And this by their Law they allow, because it stands indifferent, whether the Church lose by it, or no. but also, some Lay men take Tithes of new improve-

ments

ments by right of their Lordships. *Statute Imperij seculares* (layes a Judge of the Imperiall Chamber) *Decimas Noualium percipere iure Territorij possunt*. Which the Clergie complained against, in a Diet at Narimberg, but in vaine. And of those Tithes, Infeodations are there made, at the pleasure of the owners, into Lay hands. Which was so in practice there also anciently, as is witnessed by an old Canonist, that liued about CCCC. L. X. yeeres since; where disputing the question, *Virum Laicus possit sine peccato Decimas percipere*, and bringing the ordinarie Authorities for the negative part, he tels vs, both for Germanie and other Countries, in these words, *In contrarium potest induci generalis consuetudo in Hispania & Francia & Burgundia & Alemania in plerisque locis*. And in the Countie of Flanders an Edi& was made by Charles the fife, dated at Malines in M. CCCC. C. XXI. which commanded, that no Clergie or Lay man pretending right to Tithes, should exact or sue for other *Nouvelles Dismes autres qu'ilz & leur predecesseurs ont accoustume prendre & auoir passe quarante ans & au dessus*. but that they should rest content with what was due only, according to the former vse of payment, sauing in case of new improvements, and such like, as it was explained by another Edi& some ten yeeres after. both together are the same almost as our Statute of 2. Ed. 6. And in the Generall Coun-

q. Thomas Michael
in lib. de Iuris
Concluf. 99.

r. Zafius de feud.
p. 4. & Valentin
de Feudis, lib. 2.
cap. 5. §. 13.

q. Rellius in
summa de Dec.
num. 13.

q. 111. v. 111. 111. 111.
111. 111.

r. Ordination de
Flandern Touch
a. Robit. 11.

111. 111. 111. 111.
111. 111. 111. 111.
111. 111. 111. 111.

111. 111. 111. 111.
111. 111. 111. 111.
111. 111. 111. 111.

cell of *Lateran* of M. C C. XV. a relation is of some Nations, who although Christians, yet *secundum suos ritus Decimas de more non solvunt*; and, that other men leased their Land to them, because in regard of no Tithes being paid by them, the greater rent might be reserved; against which, remedie is there provided. The words are, *In aliquibus regionibus quedam permixta sunt gentes quae secundum suos ritus Decimas de more non solvunt, quamvis censeantur nomine Christiano, &c.* Whereupon *Innocent* the fourth, that might well know the meaning of the Councell, living so neer it, notes that the Christians, who by their own customs did not pay, were *Greeks, Armenians*, and the like. and * *Antoninus* expressly remembers the generall non payment of them in the Eastern Church as a thing not to be censured to be against Gods Law. Neither indeed have I met with any Canon Law of all that Church that ever commanded any thing touching Tithes.

Among the Laws of *Hungarie*, we find, *Decimas non solvunt Nobiles de proprijs terris*, and *Decimas non solvunt Rasciani, Rutheni, Valachi*, and *Decimas non solvunt Iudices propter laborem eorum circa decimandum*. although for other persons generally they have strict Laws for payment of them.

In the Statutes of *Poland*, it appears that about M. C C C. LXX. vnder K. *Cazimir* the second,

* *Simonius* part. 4.
lib. 1. c.

a In *Euclid.*
Arith. *De rect.* *Regul.* *Magar.* a
Sambuco edito.

b I. *Herbertus* in
Stat. Poloniae lib. D.
c. *Iacob.* *Prilafius*
lib. *Poloniae* lib. 1.
c. 4.

second, the Clergie (especially for the Diocese of *Cracow*) made diuers Laws (with his consent) vpon great differences about the paying of Tithes. One in speciall is, that Tithe must be paid of all that increases through the labour of the Plough, *exceptis Rapis, papauere, caulibus, cepis, allia, & que his sunt similia in hortis.* and *Si quis ligonifando plantauerit, Decima ab eo nulloatenus exigatur.* Some other particulars they haue about paying Tithe of Hemp and Flax (which happens somtime to be more, somtime lesse then a Tenth; because the certaintie is only from the number of beasts vsd to the plough) and of other things. whence it appears that the vse of Tithing there is not consonant to the Canon Law. And *Theodor Zauake* deliuiers it for a Law of this Countrie, that *Decima ex terris vastatis accipi non debent*, which I think is to be referd to a thirtie yeers libertie of non payment giuen especially by *Bodanz*, a Bishop of *Cracow*, to such as were Tenants of Lands lately wasted by the *Lituanians* and *Tartars* which is declared in the Law, remaining at large in the Collections of *Herbort* and *Prilufius*. whether for more particulars I refer you.

In the Laws of *Suebland* and *Gotland*, the Text is, *Decima separentur & reponantur in agro, quarum tertiam partem suscipiat presbyter, & de reliquis duabus partibus capiat Ecclesia tertiam partem.* which I vnderstand so, that the Par-
son

c. Reginald. Inge-
mundi de Iure Ec-
clesiasticis, lib. 1.
cap. 7.

son is to haue all sauing a third part out of the two parts, which were to be imployed on maintenance of the Church.

d *Statut. David*
cap. 12. 23.

In Scotland by a Law ^d of David the second about M. CCC. XL. it was constituted that no man should hinder the Clergie in disposing Tithes: *Sic quod suis Decimis possint pacifice & cum integritate gaudere, sub pena Excommunicationis, quoad Clerum. & Decem librarum penes Regem*. And Tithes there, haue been (and in many ^e places are paid) Parochially, yet also granted, altered, and disposed of by ^f positive Law as in other Countries. in the late plantation of new Churches ordaind by the last Parliament ^g there, manse and glebe and vitaille are assigned for maintenance to the Rectors, but not Tithes. And after the Statut of Annexation in the eleventh Parliament of our present Soueraign, whereby Church reuenues (sauing Parochiall Tithes, Manse and small glebe, and some other speciall possession) were resumed to the Crown, an Act was made in the Parliament ^h following against a kind of infeodations (which they call *erections of temporalities and reindes of Kirkland into temporall Lordships*, sauing such as had been before erected. And for the particular course of setting out payment of Tithes some speciall Lawes of late time they haue in Scotland, and in the other States before spoken of, but they belong not so much hither, being

e *Vide Parl. 12.*
1ac. 6. art. 3.
f *Vide Parl. 9.*
1ac. 6. & 11.
statut. 12. 13.

g *Parl. 12. 1ac. 6.*
art. 3.

h *Parl. 12. 1ac. 6.*
art. 14. 15.

not

not

not of the essentiall part of the practice of payment nor of the receiued right of Tithes. therefore I wholly omit them. One example of an Appropriation in Scotland may be here not vntimely added, which falls about the year M. C. C. XC. and shews a kind of arbitrarie disposition (euen at that time) of Parochiall Tithes of lands lying there, in a conueyance of a lay mans made to the Monasterie of Giseburn in Torkeeshire. The Grantor was that Robert de Bruis, afterward King, & one of the Ancestors of our Soueraign. The Originall thus speaks. *Omnibus ad quos presens scriptum peruenerit Robertus filius Roberti de Brus Dominus Vallis Anandiz salutem in Domino sempiternam Nouerit valueritis vestra me concessisse & presenti scripto confirmasse Deo & Ecclesie Sancte Mariae de Giseburn & Canonicis ibidem Deo seruientibus & seruituris, Ecclesiam de Anand cum terris, Decimis, & possessionibus ad eam pertinentibus & Ecclesiam de Logmaban cum terris Decimis & possessionibus ad eam pertinentibus, & Ecclesiam de Kirkpatrick cum Capella de Logan & omnibus suis pertinentiis & Ecclesiam de Rainpatrick & Ecclesiam de Cumbarres & Ecclesiam de Greenhowe cum omnibus pertinentiis earum; Tenendum & Habendum Deo & prefatis Canonicis & eorum successoribus libere quiete & honorifice, Ita quod liceat eis perpetuis temporibus de Decimis predictarum Villarum, libere disponere & ordinare pro voluntate*

i. seruatur autographum in The-
sauro Comitiis

sua, & ubicunque voluerint eas ad firmam dimittere dare vel vendere, & alio quocunque modo voluerint & ubicunque voluerint commodum suum facere sine Impedimento mei & heredum meorum & hominum nostrorum, &c. The seale, in green wax, annexed to it, hath impression of a Knight armed and mounted, as for present onser in the wars, & is circumscribed with *Esse Ferox ut Lea.*

How the Laws of Ireland stand for Tithes, is best seen in the Statuts of that Countrie of 28. Hen. 8. cap. 17. of dissolutions, and 33. Hen. 8. cap. 12. of payment according to ancient custom and recouerie of Tithes, after the dissolution, giuen into lay hands, in like manner as in *England.* And here may be no vnfit place to remember that ancient Law ordained by ^h Henrie the third, within the Archibishopricke of *Dublin*, whereby it was commanded that euery man *non expectato mandato Regis vel assensu, de gurgibus & Piscarijs, Ecclesijs in quarum Parochijs sunt predicti gurgites vel piscaria, Decimas soluant, quia R. non vult in periculum anime sue, huiusmodi Decimas detineant.* We purposely omit particular mention of such of the reformed Churches, as in this last age haue brought their Ministerie to stipends, and altered almost all the former practice of Ecclesiastique policie. For the practice of payment, and other disposition of Tithes, and for the Laws, and Opinions, touching the right of them, thus much. But whatever this

h Ro. Pat. 14.
H. 3. m. 17. 4.

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this Kingdom of *England* might have specially afforded, for *Laws and practice of Tutling*, shall by it selfe, in its own singular order, be next deliuered.

C A P. VIII.

The Laws of England made in the Saxon mycel synober or pitegemoter, in Parliaments, and in the Councells here held aithen Nationall or Prouinciall, or by the Pope, for the due payment or discharge of Tithes in this Kingdom. Petitions or Bills in Parliament touching them, are inserted, all in their course of time.

Most of the *English Laws, Constitutions, and Bills in Parliament*, that are referred to this place and here collected, were originally written in *Saxon, Latin, or French*, and the *Saxon*, for the most part, were anciently (but it seems since the *Norman conquest*) turned into a barbarous latin that yet better shews their meaning then a pure. Such as are found in *Latin* only I have faithfully deliuered according to the Copies that gaue them. Neither durst I suspect that any Reader fit for the matter should need an Interpreter, no otherwise haue I done in what is of the old *French*, it can hardly be any thing but inexcusable sloth, that can trouble any Reader (that is fit also for the matter) in the

understanding it. But in regard the old Saxon is known at all to few; and that hardly any better interpretation of the Laws written in that language can be then the old barbarous Latin, I have ioined alwaies (where it might be) both the Saxon and the Translation. To have left out the originall, had prevented some freedom of the Readers iudgement, and tied it to the translators. To have added no translation, had been as a purpose to have troubled even the fittest Readers with a strange tongue, which also to have otherwise interpreted, had been but to enuie them the help of those Ancients (that had better means to know the interpretation of those Laws) and so make them looke only as through spectacles of mine new made. I was willing to giue all (as the course of the collection would permit) that herein might help to make a ground of free iudgement. yet also where I see cause of more I adde it, but refer all to able censure. The Laws and Constitutions thus succeed.

2 Ms. in Biblioth.
Cantabrigie.

I. An ancient collection of diuers Canons written about the time of Henry the first, with this inscription of equall age; Incipit excerptio Domini Ecgberti Archiepiscopi Eboracensis Ciuitatis, de iure Sacerdotali, habet hese words, Vennusquisq; Sacerdos cunctos sibi pertinentes erudiat vt sciunt qualiter Deum totius facultatis Ecclesijs diuinis debite offerant. and immediately follows, Vt ipsi Sacer-

“dotes

Sacerdotes à populis suscipiant Decimas; & nomi-
 na eorum, quicunque dederint, scripta habe-
 ant, & secundum auctoritatem Canonicam co-
 ram testibus dividant, & ad ornamentum Ec-
 clesie primam eligant partem, secundam au-
 tem ad usum pauperum atque peregrinorum,
 te per eorum manus misericorditer cum omni
 humilitate dispensent; tertiam vero sibi nec
 ipsis Sacerdotes reseruent. If the credit of
 this be valued by the inscription, then is it about
 DCCC. L. years old. For, that Ebert liud
 Archbishop of York from the year DCC XLIII.
 to DCC. LXVII. But the auctorite of that Title
 must vndergo censure. Who ever made it, sup-
 posed, that Ebert gathered that Law and the
 rest ioind with it out of some former Church
 Constitutions, neither doth the name *excerptio-*
nes denote otherwise. But in that collection som
 whole Constitutions occur in the same syllbles
 as they are in the Capitularies of Charles the
 Great, as that of *unicuique Ecclesia unus mans-*
que integer; &c. and some others which could
 not be known to Ebert that died in the last year
 of Pipin father to Charles. how came he then
 by that? and how may we believe that Ebert
 was the autor of any part of those Excerptions?
 vnlesse you excuse it with that vse of the middle
 times which often inserted into one body and
 vnder one name Laws of different ages: but ad-
 mit that: yet what is *secundum Canonicam aucto-*
ritatem

1 vide sup
 cap. 6. 1.
 2 vide sup
 cap. 6. 1.

in Annot. ad. l.
 12. 91.

3 vide sup
 cap. 6. 1.

ritatem coram testibus dividantur. The ancientest
Canonica autoritas, for dividing Tithes before
 witnesses, is an old Imperiall, attributed in some
 Editions to the XI. yeere of the reigne of
Charles the great, being King of *France*, in o-
 thers to the Emperor *Lothar* the first. But
 refferre it to either of them, and it will be diuers
 yeers later then *Ebert's* death. And other mixt
 passages there plainly shew, that whose soeuer
 the Collection was, much of it was taken out of
 the Imperiall Capitularies, none of which were
 made in *Ebert's* time. Perhaps, the greatnesse
 of his name was the cause why some later Com-
 piler of those Excerptions might so inscribe it, to
 gain it autoritie. for he was both brother to *Ed-
 bert* King of *Northumberland*, and the first also
 that, after *Paulinus*, restored the name of Arch-
 bishopricke, and the Pall, to *Torke*. And the
 heads of a Synod held in *Ebert's* time, vnder
 King *Esibelald*, and *Cuthbert* Archbishop of
Canterburie, are yet extant; but not any expresse
 mention is found in them of Tithes, although
 most of the particulars of Church-gouernment
 are toucht there.

o Edm. Vill. A.
 mark. 1497.

p. Leg. Longsh. d.
 lib. 1. 20. 8.

q. Censur. 3. cap. 9.
 pag. 583. ad. 2. 7. 11.
 1567.

II. The Autors of the Centuries 9 have a
 Synod held in the yeer D.C.C.LXXXV I. vn-
 der two Legats sent from Pope *Hadrian* the first
 with letters, for reformation and establishing of
 Church Laws, to *Offa* King of *Mereland*, and
Alfwold King of *Northumberland*, and to the

two Archbishops. the particulars of the Synod are related in an Epistle to the Pope from those Legats (which were the first that had so come from Rome hither after *Augustine*) wherein it is related, that *Gregorie* Bishop of *Ostia*, one of the Legats, went into *Northumberland*, and *Theophilact* Bishop of *Todi*, the other, to *Offa*, who with *Kenulph* King of *West-Saxonia*, called a Councell for the Southern part, as *Aelfwold* for the Northern, *Gregorie* sayes, That in the Northern parts *ad diem* Councilly conuenerunt omnes *Principes Regionis tam Ecclesiastici quam seculares*; and after many Institutions of Canon Law there, the *XVII. Chapter* is, de *Decimis* dicitur sic ut in *Lege* scriptum est: *Decimam partem ex omnibus frugibus tuis seu primitijs deferas in Domum Domini Dei tui Rursum per Prophetam: Adferre, inquit, omnem Decimam in horreum meum ut sit cibus in domo mea, & probate me super hoc, si non aperuero vobis catarractas coeli & effudero benedictionem usque ad abundantiam, & increpabo pro vobis deuorantem qui comedit & corrumpit fructum terræ vestræ, & non erit ultra vinea sterilis in agro dicit Dominus. sicut sapiens ait: Nemo iustam Eleemosynam de his quæ possidet facere valet, nisi prius separauerit Domino quod à primordio ipse sibi reddere delegauit. Ac per hoc plerumque contigit ut qui Decimam non tribuit ad Decimam reuertitur*

titur. Vnde etiam cum obtestatione præcipi-
 mus, ut omnes audeant de omnibus quæ pos-
 sident Decimas dare; quia speciale Domini
 Dei est; & de nouem partibus sibi viuat & E-
 leemosynas tribuat. Et magis eas in abscon-
 dito facere suauimus quia scriptum est; cum
 facis Eleemosynam, noli tuba canere ante te.
*The authority of this Canon, may be known
 out of what is there further added.* Hæc De-
 creta, beatissime Papa Hadriane, in Conci-
 lio publico coram Rege *Ælfwaldo* & Archi-
 episcopo *Bambaldo* & omnibus Episcopis &
 Abbatibus Regionis seu Senatoribus Duci-
 bus & populo terræ proposuimus; & illi ut
 superius facti sumus cum omni deuotione men-
 tis iuxta possibilitatem virium suarum, adiu-
 uante supernâ clementia, se in omnibus custo-
 dire denouerunt; & signo Sanctæ Crucis in
 vice vestra, in manu nostra confirmauerunt,
 & postea stylo diligenti in Charta huius pa-
 ginæ exarauerunt signum Sanctæ Crucis Infi-
 gentes. *Then follow some subscriptions of Bi-
 shops,* Et His quoque saluberrimis admoniti-
 onibus, Presbyteri, Diaconi Ecclesiarum, &
 Abbates Monasteriorum, Iudices, Optimates,
 & Nobiles vno opere, vno ore consensimus &
 subscripsimus. *After this so concluded in the
 Northern state, the same Legat, together with Mal-
 uin and Pyttell, Embassadors from Ælfwald, take
 with them all those Decrees and Canons, and goe*

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to the Councell held vnder Offa for the Western
 parts, Vbi (as the words are) gloriosus Rex
 Offa cum Senatoribus terræ vna cum Archi-
 episcopo laenbercto (some call him Lambert)
 Sanctæ Ecclesiæ Dorouernensis (that is, of
 Canterburie) & cæteris Episcopis Regionum
 conuenerat, & in conspectu Concilij clarâ vo-
 ce singula capita perlecta sunt, & tam Latine
 quam Teutonicè (that is, in English-Saxon,
 which then was the selfe-same with Dutch or Teu-
 tonique) quo omnes intelligere possent, dilu-
 cidè referata sint: qui omnes consona voce &
 alacri animo gratias referentes Apostolatus
 vestri admonitionibus (the Legats so write to
 the Pope) promiserunt se diuino adminicu-
 lante fauore iuxta qualitatem viriū promissi-
 mâ volūtate in omnibus hæc statuta custodire.
 And Offa and his Bishops, Abbots, and some
 Princes subscribe with the Crosse to it. What
 Copie of this Synod the Centuriators had, or
 whence they tooke it, I find not. But if it be of
 good autoritie, it is a most observable Law to
 this purpose. being made with such solemnitie
 by both Powers of both States, of Mereland and
 Northumbreland, which tooke vp a verie great
 part of England, and it is likely, that it was
 made generall to all England. In the relation
 of the Legats to the Pope, mention is of Kenalphe
 King of West-Saxonie, his ioyning with Offa in

r. *Henric Hunting-*
don, lib. 4. pag. 197.
 & *Reg. de Hoved.*
p. 235. edit. Landon.
sed vide etiam Reg.
de Hoveden, sub
ann. 786. & de
scholward lib. 2.
cap. 20. & Flor.
Wigorn, sub ann.
785.

calling the Councell. but the confirmations of the Decrees haue no reference to him. But, by the way, if you examine it by storie and Synchro- nisme, *Kenulph* perhaps could not haue at all to do with it. For some of our old Monks expresse- ly affirme, That in the second year * of *Brithric*, next successor after *Kenulphs* death, Pope *Adri- an* sent his Legats in *Britanniam ad renouandam fidem quam predicauerat Augustinus*. And that they then held their Synod at a place called *Cealchitbe*. how could *Kenulph* be there then, as the Legats relate? Belceue the Monks as you will. but indeed, an exactnesse here is not easie extracted out of the disturbed times of our Chronicles. They talk also of a Synod held in *Wicanbale* for the North parts, a yeere or two after. Doubtlesse they intend this same that is extant in the Centuries; if at least it be of suffi- cient credit. Neither can it be suspected by any circumstance in the subscriptions; which being so many, might haue by chance soon got among them a character of falsehood, had it not been genuine. In the printed *Houeden*, *Gregorie*, one of the Legats, is called *Georgius*, perhaps for *Gregorius*. but my Ms. hath also *Georgius*. But if *Henry* of *Huntingdon* and *Roger* of *Houe- den* give vs the time right of the Legats com- ming hither, then is that mention of *Kenulph*, in their supposed Epistle to the Pope, a plaine character

character of falsehood, or ignorance, in some transcriber; who also, in one place, hath *Oswaldus* for *Ælfwaldus* King of Northumberland. But those which speak of that Synod of these Legats, seeme to suppose it extending through the whole Kingdome. See also p. VIII.

III. In the Laws made between K. *Alfred* and *Gutbrun* the Dane (to whom the Prouinces of *East-Anglia* and *Northumberland* were giuen to hold of the Crown) and renewd also between the same *Gutbrun* and K. *Edward*, sonne to *Alfred*, about the yeer D. C C C C. this occurs, *Gif þu Teopunge forþeold, gylde laþhlite mid Denum, wite mid Englum*, that is, as the old Latin Translation hath it, *Si quis Decimam contrateneat, reddat Lashlite cum Dacis, Witam cum Anglis*. *Lashlite* denotes the Danish common forfeiture, which, as it is thought, was in most offences XII. Ores (that was commonly XX. shillings, for XX. pence made an Ore commonly; and sometime, according to the variation of the Standerd, XVI. pence was an Ore. But in *Oxfordshire* specially, and *Glocestershire* in *Domes-day*, XX. goe to an Ore) as the English common forfeiture, or the *Wite*, was XXX. shillings. The occurrence of these two names, is frequent in the Saxon Laws; and it may seem by this, that some other Law preceded for the payment of Tithes, or els that the right of them

¶ Vide *Fad. Edm.*
ward. & Guthrum
edit. Lambard.
cap. 6.

¶ Vide *Regist. Bar-*
ton. apud Camden.
in Belg. pag. 186.
edit. Lat.

was otherwise supposed cleer. For the autoritie of this and the rest comprehended in those of *Alfred* and *Gutbrun*, obserue that in their title, *7 da p. tan eac de ryppan p. n. on, o. r. 7 Unreldan 7 realp genipodon 7 mid gode gehyhton*, that is, and the Wisemen (or the Baronage) of succeeding times very often renewed that Councell of theirs, and in *bonum adduxerunt*, as in the old Translation those last words are turned.

IIII. It is reported of King *Ætbelulph*, that in the yeer D. CCC. LV. *Documant* (as *Ethelward* writes) *de omni possessione sua in partem Domini & in vniuerso regimine sui principatus sic constituit*. The words of his Charter, whereby he did it, are, *Cum Concilio Episcoporum ac Principum meorum Consilium salubre atq; vniforme remedium* (hee means remedie against those miseries which the English had endured by Danish irruptions) *affirmantes consensimus, vt aliquam portionem terrarum hereditariam antea possidentibus omnibus gradibus sue famulis & famulabus Dei Deo seruientibus, sue Laicis miseris semper Decimam mansionem vbi minimum sit, tum Decimam partem omnium bonorum in libertatem perpetuam donari Sancte Ecclesie dijudicauit, vt sit tuta & munita ab omnibus secularibus seruiantibus &c.* So is it reported in the Abbot of *Crowlands* Historie, and varies not much in *William of Malmesburie*, and *Nicholas of Gloucester*

^a In Ball-Cotton.
Ex apud P. C.
The Allen, Oxon.

demotionem sui. And in the rhyms of ^a Robert of Gloucester.

The King to bolge Chirche thereafter ever the
more drough,
And tithe well all his lond, as he ought, well
enough

^a Ms. in Biblioth.
Cottoniana.

If we well consider the words of the chiefest of these Ancients, that is, *Ingulphus*, we may conie-
cture that the purpose of the Charter was to
make a generall grant of Tithes payable freely
and discharged from all kind of exactions vsed
in that time, according as the Monk of *Malmes-
burie*, & ^a John Pike in his supplement of the
Historie of England, expresse it. *Decimam*, say
they, *omnium bydarum infra regnum suum a tribu-
tis & exactionibus regis liberam Deo donauit.*
that is, granted the Tithe of the profits of all
Lands, free from all exactions. for, the granting
of the tenth part of the Hides or Plough-lands,
denotes the tenth of all profits growing in them,
as well as *Decima acra sicut aratrum peragrabit*,
which is vsed for tithing of the profits, in the
Laws of K. Edgar, Eshelred, and Knout, and ac-
cordingly also is this, of *Eshelulph*, related in
the Saxon ^b Chronicles of *Peterborough*, *Can-
terbury*, and *Abingdon*. he did tithe his lander o-
per all his rice gode to lufe &c. as the words are.
that is, his Lands ouer all his Kingdom &c. and
doubtlesse *Ingulphus* no otherwise vnderstood it
then of perpetuall right of Tithes given to the
Church,

^b Ms. in Biblioth.
Cottoniana.

Church, where he remembers it by *tunc primo cum Decimis &c.* So that the tithe of prediall or mixt profits was given, it seems, perpetually by the King with consent of his States both Secular and Ecclesiastique, and the tithe of euery mans personall possessions were at that time also expressly included in the gift, because (it seems) before that, the payment of all Tithes had commonly been omitted. The ancientest of Writers that hath the Charter whole is that *Ingulpur*: but questionlesse it is much corrupted especially in that of *portionem terrarum hereditariam antea possidentibus omnibus gradibus*. for what may that signifie? But in *Matibew of Westminster* it is farthest from deprauation of language; where, after *portionem*, follows *terra mea Deo & Beate Mariae & omnibus Sanctis iure perpetuo possidendam concedam; Decimam scilicet partem terra mea ut sit tua &c.* the priuilege or libertie annex to it is, that it should not be only free from all taxes and exactions vsed then in the State, but also from that *trinoda necessitas* (whereto all Lands whatsoeuer, were subiect although otherwise of most free tenure) by which they ment their *expeditio* or militarie service, *pontis constructio*, & *arcis munitio*. this freedom of that time you must it seems so interpret, that euery man was from henceforth to be valued in all Subsidies and Taxes according only to his nine parts of his Lands and profits; and the profits of the tenth being

e Vide, si places;
The Manor part. 2.
pag. 301.

being due to the Church, were both in his and their hands hereby discharged from all paiments and taxes whatsoever. But should it be vnderstood only for a particular consecration to the Church of one time, and of the Land ^d it self to be possessed by the Clergie or employed to other good vses of charitie, then had it no more due place here among the Laws of Tithes, then the storie ^a of *Robert Earle of Gloucester* his giuing euery tenth stone (of his prouision for the building of a Towr neer to *Bristow*) to the erecting of a Chappell, or *Edward* ^e the Confessor his building *Westminster Abbey* with the tenth of one yeers reuenuue, or ^b *Offa's* giuing the Tithe of his estate to the Clergie and the Poor, or the like. But I conceiue it as is before declared. It is fit to adde here also another of *Estelulphs* grants or Constitutions by the Parliamentarie consent of that time, made to like purpose; and that at large, because it is not in any published autor. In the ^h Chartularies of the Abbey of *Abingdon* it occurtres in the one, with the title of *Privilegium Estelulfi Regis*, in the other with *Quomodo Adelwulfus Rex dedit Decimam partem regni sui Ecclesijs*. then follows the Charter or Constitution. *Ego Estelulfus gratia Dei Occidentalium Saxonum Rex in sancta de celeberrima Paschali solennitate, pro maiore remedio anime & regni posteritatis & populi ab omnipotenti Deo mihi collati consilium salubre cum Episcopis, Comitibus,*

^d Sic intelligit, ni fallor, *Forus Hist. Eccles. Angl.* pag. 133.

^e *Candau. in Belg.* fol. 171.

^f Idem. pag. 308. in *Trinchantum*.

^g *Polydor. Virgil.* lib. 4. cap. 1.

^h *Maxim. Bibl. Cant.*

& cunctis Optimatibus meis perfecti ut Decimam
 partem terrarum per regnum nostrum non solum
 Ecclesijs darem, verum etiam & Ministris nostris
 in eadem constitutis in perpetuam libertatem habere
 concessimus, ita ut talis donatio fixa incommutabi-
 lisque permaneat ab omni regali seruitio & omni-
 um secularium seruitute absoluta. Placuit autem
 Ælfbano Episcopo Scirburnensis ecclesie & Swi-
 thuno Wentane Ecclesie Episcopo, & Ducibus
 communiter. Hoc autem fecimus in honorem Do-
 mini nostri Ihesu Christi & beata semper Virginia
 Marie & omnium Sanctorum & Paschalis festi
 reuerentiam, ut Deus omnipotens nobis & nostris
 posteris propitiari dignetur. Scripta est autem hac
 Chartula anno ab incarnatione Domini nostri Ihesu
 Christi DCCC. LIV. indictione II. die Pa-
 schali, in Palatio nostro qui dicitur Wilton. Qui
 autem augere voluerit nostram Donationem augeat
 omnipotens Deus dies eius prosteras. Si quis vero
 minuere vel mutare presumpserit, noscat se ante
 tribunal Christi redditurum rationem nisi prius sa-
 tisfactione emendauerit. Ego Æbelwlf Rex
 Ego Ælfbstan Episcopus. Ego Swithun Episco-
 pus. Ego Wlstafr Abbas. Ego Werferd Ab-
 bas. Ego Esbered & ego Alfred filij Regis con-
 sensimus. the ancientest hand wherein this is
 written in the Chartularies, is of about Henry the
 second his time. and for the credit of it, you
 must relie vpon those Chartularies. It differs in
 date both of place and time from the other. this

NISI PRIUS

is dated at *Wilton*, that at *Wincheſter*. this in DCCC. LIV. the ſecond Indiction at Eaſter. that DCCC. LV. and in ſome, the fourth Indiction, and in others, the third in November. ſuch a difference of Indictions may well be, if the Autors that deliuer it, added that note for the time that they conceiud it to be made in, not for the very Characters of the Date of the Originall inſtrument. for, Nouember falling in the fourth Indiction Imperiall, may be of the third Indiction Pontifical. the one beginning in September, the other in December following. that difference is in the relations of it between *Florelegus* and the Abbot of *Crowland*. and the Abbot perhaps reckond by the Pontifical Indictions, and the other Monk by the Imperiall. if at leaſt their Copies be not corrupted. But whereas in *Malmesbury* the date of that firſt Charter is DCCC. XLIV. Indict. IV. V. *Nonas Nouembris*. plainly it is falſe, neither could that Indiction be in the Character of the year DCCC. XLIV. which fell in the ſeuenth Indiction.

*Mr. in Dillſorb.
Cottoniana, cap. 65.
& manu conſer.*

V. In a Volume that belonged to the Abbey of *S. Auguſtines* in *Canterbury*, titled *Statuta Synodorum*, written in a hand of about DCCCC. yeers after Chriſt, or ſomewhat more, one Paragraph is *de Decimis*. But the Moſaicall commandement (for ſew of the Iudicials of *Moses* are wanting in it) & a paſſage in *S. Auguſtine* are the only authorities brought for them. No

Coun-

Councell or positive Canon is mentioned in it to that purpose; although for other things, *Synodus Romana*, *Synodus Atracensis*, *Narbonensis*, and very often *Synodus Hybernensis* occur in it. The Authors vsed, by him that compiled it, are *S. Augustin*, *S. Hierom*, *S. Gregorie*, and *Isidore*, (which were in those middle times the ¹ chiefe, almost the only Fathers of the Church that were read) and sometimes *Gildas* and *S. Patrike*. whence it may seem that it was collected by some Briton or Irishman. and certain Canons of that Abbot *Adomann* spoken of by ¹ *Bede*, are annexed to it. Neither did the Autor of it doubt but that he had all the Councells of credit that preceded him, as his own testimonie in his Preface iustifies. there, after a short relation of the IV. most known and generally receiued, of *Nice*, of *Constantinople*, of *Ephesus*, of *Chalcedon*, he addes: *Hæ sunt quatuor Synodi principales fidei Doctrinam plenissime prædicantes. sed & si quæ sunt Concilia quæ sancti Patres spiritu & diuino pleni sanxerunt post istarum quatuor auctoritatem, omni manent stabilia vigore, quorum gesta in hoc opere condita tenentur.* But to the same Volume is ioined another Collection, with this inscription; *Incipiunt Pauca Iudicia quæ desunt de supradictis*, in which the old Canons of *Rome* (that is, the *Codex Romanæ Ecclesiæ*, or some other in the nature of it, which was receiued into these Northern parts, as a Director of the Church, in the

k Read otherwise
of in Leam. Sp. 1.
in Dis. 30, cap. 1.

1 Eccles. Hist. lib. 5.
cap. 10.

in Protuli eun-
dem librum Ca-
nonem, ab Theo-
doro Cant. Arch.
in Concil. circa
ann. 670. apud
Hertford celebra-
to. Bed. Hist. Ec-
cles. lib. 4. cap. 5.

eldest times of Christianitie here, as you may see in our ^{ancientest} Church-storie) is cited, and diuers authorities out of those Fathers and a few of the elder Councells. But, no denominated Pontificiall or Synodall is rememberd there for Tithes. Only the Texts of *Moses* for Tithes, first Fruits, the first Born, and such more are numberd together; and then follows a Chapter *de Diuisione Decimarum*, with this declaration: *Lex dicit; ipsi Sacerdotes populi suscipiant decimas, & nomina eorum, quicquid dederint, scripta habeant & secundum auctoritatem Canonicam &c.* in the self same words as are before attributed to the Excerptions of *Ebert*. The exact age of those *Statuta Synodorum*, appears not. But they were collected about *K. Athelstans* time. at least, then was the Copie that remains of them writen, as may be coniecturd alone (if other reasons failed) from the similitude twixt the Character sound in them and that of the Text of the holy Euangelists, which King *Athelstan* caused to be fairly writen, and consecrated to *S. Cuthbert*. That text with those *Statuta* are both yet preserued from the iniurie of time, among those inestimable moniments of that noble Knight *S. Robert Cotton*. For those *Paucas iudicia* that follow; they are of a later hand then the *Statuta*; but of what time, it sufficiently appears not. That *Lex dicit* in them may be referd to the Canon ^{related} out of the Excerptions of

of *Ecbert*. but whence that Canon is originally,
I have not yet learned.

V I. King *Arhelstan* about the yeer DCCC
XXX. by aduise and consent of the Bishops of
the Land, made a generall Law for prediall and
mixt Tithes, in these words. Ic *ſpeltane* cýning
mio *geſeah*te *fulhelm*er *min*er *hubb*ſceoper. 7 *oþra*
*mun*pa *biſceopa* *bebeode* *eallum* *minum* *geneapum*
*ðu*ph *ealle* *mine* *ſi*ce (on þæt *oþuht*ner *nama*. 7 *eal*-
pa *halgena*, 7 *for* *mine* *lu*fa) þæt hi ænoru *min*er æge-
ner æhter ðam teoþe *ge*ryllap. ge ðæt *hbbend*er *yn*-
fer. ge ðæt *geaplice* *per*ſomes; 7 þæt ilce *gedo* *eac* ða
biſceopa *heona* *ge*fulcra. 7 *eac* *mine* *eal*ðorþmanna.
7 *geneapa*; 7 ic ſille þæt *mine* *biſceoper* 7 *geneapa* ðæt
*ðema*p *eallum* ðe *hio* *gehýp*rumian *gebýna*p. 7 þæt ilce
to þam *tide* *ful*ſnemap ðe *pe* *hio* *ſet*taþ. 7 þæt *ſi*ce *to*
ðem *o*rg ðæt *be*heapounger *ſeint* *Iohanner* þæt *ful*-
teper; which is anciently thus turned 9 into La-
tine. *Ego Arhelstanus Rex Consilio Wulstielmes*
Archiepiſcopi mei & aliorum Epiſcoporum mea-
rum mando prepoſitis meis omnibus in toto regno
meo, & precipio (in nomine Domini & Sancto-
rum omnium & ſuper amicitiam meam) ut in pri-
mis de meo proprio reddant Deo Decimas tam in
viuente captali quam mortuis ſugibus terra. &
Epiſcopi mei ſimiliter faciant de ſuo proprio & Al-
dermanni mei, & Prepoſiti mei. Et volo ut Epiſ-
copi & Prepoſiti mei, hoc iudicent omnibus qui eis
parere debent, & hoc ad terminum expleant quem
eis ponimus, i. decollatio S. Iohannis Baptiſta. and

o *Leſ. Aubill.*
edu. & Lambardo.

p. In Ms. *Cotto-*
nian inferunt
illic hæc veiba:
ſya man
ſihtaſt
mæge. oððe
gemetan,
oððe ge-
tellan, oð-
ðe pargan.
i. In the uſuall
way that may
be; either by
meaſure, num-
ber, or weight.
9 In *Hollin-*
ſhede & *Ma. in*
Bibl. Cotton.

the example of *Iacob*, with a Text or two out of holy Writ and *S. Augustin*, is added to moue deuotion. That translation agrees wholly enough with the *Saxon*, sauing in those words *mortuis frugibus*; the *Saxon* being yeerly fruits, which also another ¹ Copie of this translation expresses by *ornotinis frugibus*, corrupted plainly from *hornotinis frugibus*, i. the fruits of one and the last yeer, or the yeerly increase. and perhaps some ignorant Monk finding *ornotinis*, and not vnderstanding it, because he would be sure to square it to his own abilitie of learning, made it *mortuis*. which kind of changing hath examples enough in bold but ignorant Criticisme. that which the old Translator calls *viuens captale*, is, libbender *gyper* i. *liuing cattell*, in the *Saxon*; which hath often ² *ceap* also for *chattels*, and somtimes specially for *liuing cattell*, but the old ³ Latine of the *Saxon* Laws turns *ceap* also into *captale*, whence *cattalla* is like enough to haue discended. and the first stock of Cattell which by King *Ina's* ⁴ Laws was to be giuen to Orphans, was called *frumytol* in *Saxon*, but *primum captale* in the old translations. In *Brampton's* ⁵ Historie (which is full of the Laws of the *Saxon* times) after those constitutions of *Gratley*, part of which are in *Lambard's Archaionomia*, follows a thankfull acknowledgment to *K. Athelstan* for this Law of Tithes, in these words. ⁶ *Karissime; Episcopi tui de Kent & omnis Kent-*

¹ *Uen. Leg. Mld.*
Ms.

² *Ina Leg. cap. 37.*
40. & 42.

³ *In alia historia*
Iornallens. Ms.

⁴ *Cap. 38.*

⁵ *Diff. Hist. 10.*
Waltham.

“*Kentſire*, *Thayni*, *Comites & villani tibi Do-*
 “*mino dulciſſimo ſuo gratias agunt, quod no-*
 “*bis de pace noſtra præcipere voluſti, & de*
 “*commodo Noſtro perquirere & conſulere;*
 “*quia magnum opus eſt inde nobis diuitibus &*
 “*egenis. Et hoc incepimus, quantâ diligentia*
 “*potuimus, conſilio horum ſapientum quos ad*
 “*nos miſiſti. Vnde, Kariſſime Domine, primum*
 “*eſt de noſtra Decima, ad quâ valdè cupidi*
 “*ſumus & voluntarij & tibi ſupplices gratias*
 “*agimus admonitionis tuæ.*”

VII. About D. CCCC. XL. *Edmund*
 King of *England* in a *Micelne ſynod*, that is, a
 great Synod, or Councell, a kind of Parliament,
 both of Lay and Spirituall men (which are, ex-
 preſſed by *godcundra* and *poplocundra*) held in *Lon-*
dan, made this * *Act. Teopungum ꝑe bebeodaꝛ æl-*
cum Cþyrcenun men be hꝛ Cþyrcendome. 7 cþyrc-
ſceat. 7 ælmeſſeoħ; Gꝛ hꝛc hꝛa ðon nýlle. nꝛ he aman-
rumod. Which is anciēly 7 turned; Decimam
præcipimus omni Chriſtiano ſuper Chriſtianitatem
ſuam dare; & emendent Cyrcſceatum i. Ec-
cleſiæ cenſum, & ælmeſſeoħ i. Eleemoſynæ pe-
ciuniam. ſi quis hoc dare noluerit, excommunicatus
ſit. And all agrees with the Saxon, ſaving only,
that nothing answers to the word emendent.
 That *Cyrcſceat* is a Church-rent of Corn, or
 the firſt fruits of Corn yeerly in thoſe times, and
 regularly payable at *S. Martins* day to the
 Church *; and is ſometimes writen *Curſceet*;
 ſome-

* *Lex Edmundi,*
apud Lambard,
cap. 2.

7 *in Dili Hiſt.*
Itinerary.

* *Videſis Ita leg.*
cap. 4. & 63. & 2.
apud Mathieuſer.
lib. 2. c. 21. Canonicus
R. Epil. ad Angli.
& Lambard. in ex-
pli. verb. in Pri-
mitia, & Canonicus
leg. 2. 10. & 8. & 9.
leg. cap. 2. & 3.

sometimes otherwise. And in an old Ms. Exposition of Law-terms, occurs, *Cherchefonde, une mesure de Ble que checun homme soleit envoier a Saint Esglise en temps de Bretons*. Plainely, Church-Corn is vnderstood; and *Cyrksear*, that is, Church-rent is the originall whence *Cherchefonde* is there corrupted. And among Articles^a inquirable by every Escheator in 44. Hen. 3. about the Profits, Estate, Tenue, and Issues of the Kings Tenants, one is of *Cherchescot tam in blado quam in Gallinis, & in alijs exitibus*. It is *Circset* often in the book of Domesday. Where it is found belonging sometimes to Abbeyes, somtime to Parish Churches, sometimes to others. It was still as first fruits. And this old testimonie is for the antiquitie and continuance also of payment of it here. *Churebesset*
 cc *b* certam mensuram bladi tritici significat
 cc quam quilibet olim sancte Ecclesie die sancte
 cc Martini tempore tam Britonum quam Anglo-
 cc ram^c: Plures tamen Magnates post Nor-
 cc manorum aduentum in Angliam illam con-
 cc tributionem, secundum veterem Legem
 cc Moyse, nomine primitiarum dabant, prout
 cc in breui Regis Knuti ad summum Pontificem
 cc transmissio continetur, in^d quibus illam con-
 cc tributionem appellat *Obireksed*, quia semen
 cc Ecclesie. But what the Autor meanes by that Letter or Brief of King Knout, sent to the Pope, I as little know, as why hee cites that for
 autoritie

^a *Anal. Monach. Duroum. Ms. apud V.C. Thom. Allen. Oxoniens.*

^b *Rota Ms. lib. 2. cap. 47.*

^c *Supple folio 60.*

^d *L. 1. 1. 1.*

authoritie to proue what the Baronage did after the Normans. Indeed, an Epistle is extant, which Knowl sent into England (by Living Abbot of Tanislok) as hee was taking his iourney home-wards from the Pope. and therein, mention is of this Cure-see. of any other I am yet ignorant. That Aelmepeoh, or Almes-money, was the Peter-pence, due yearly at the first of August, by institution, as some will, of King Ina, as others, of King Aethelulph. And they were called also Romepeoh, Romercot, Heoppening.

e Apud G. Mal.
miller, 61.5.9.11.

q. 10. 11. 12.

VIII. Of the same time, some Constitutions are extant, made by Oda Archbishop of Canterburie (yet not, for aught appears by them, in a Synod) with this Preface, *Ego Oda humilis & extremus diuina largiente clementia, almi Presulis & Pallij bonore ditatus, quedam documenta omni Chriscicola non indigna, quae a praecedentibus illustrium virorum Praeceptis certissima comperi, ad consolationem Domini mei Regis scilicet Aetmundi omnisque populi excellenti Imperio eius subiecti, in ista cartula, coadunare decreui. Vnde deuotissime obsecro & elementissime hortor audientium mentes ut si quando haec recitanda audiant interius videlicet & in corde, frequenti meditatione plantent, & multiplici bona operationis munere ex eo fructum pacatissimum in tempore messis sibi colligant. Primo capitulo praecipimus & mandamus ut Sancta Dei Ecclesia &c.* And so goes on with some particulars which belong to Church-

f. M. comp. in
Vol. quod Codex
Eccles. Landan.
dictum in Bibl.
Cotton.

q. 10. 11. 12.

q. 10. 11. 12.

Mal. 3. 10. 11. 12.

g Mal. 3. 10.

Mal. 3. 10. 11. 12.

Mal. 3. 10. 11. 12.

h De gest. Pontif.
lib. 1. c. 114. 2.

i Leg. Edm. cap.
1. 1. p. 1. 4. 11.

discipline; the XI. and last Chapter being only for Tithes: in these words. *X. Capitula mandamus & fideliter abssecramus de Decimis dandis sicut in Lege scriptum est. Decimam partem ex omnibus frugibus tuis seu primitiis deferas in domum Domini Dei tui. Rursum Prophetas, Afferre, inquit, omnem Decimam in horreum meum, ut sit oibus in domo mea & probate me super hoc si non aperuero vobis cataraetas cœli & effundero benedictionem usque ad abundantiam & increpabo pro vobis qui comedit & corrumpit fructum terræ vestræ. & non erit ultra vinea sterilis. Vnde & cum obtestatione precipimus ut omnes studeant de omnibus quæ possident dare Decimas; quia speciale Domini Dei est; & de nouem partibus sibi viuant & Eleemosynas tribuant. Where note, the syllables are of that which in the Centuries is referred to an *English Councell* of D. CC. LXXXVI. before in p. 11. For this of *Odo*, although no expresse Occurrence denote, that it was in a Councell, yet you may much incline to beleue it was in one, if you compare it with ^h what you find in the Monk of *Malmesburie* of him.*

I X. King *Edgar* about the yeer D. CCC. LXX. mid his wena geleafte, that is, with the aduise and counsell of his Wisemen, or Baro-nage, ordained, That the Church should enioy all her Liberties, 7¹ man agyre ylce ælc teopunge to þam ealdan mynre de reo hyrnerre to hyrre; 7 ri þonne swa geleafte. aghen of ðagner in land. ge of neaþland. swa his fullgega;

2. Gif

1. Gif hya ðonne ðegna sý. ðe on hyr boclande cýn-
can hæbbe ðe legerþrope on sý. gerylle he ðonne ður-
dan wæð hyr agenre teofunge into hyr cýncan;

2. Gif hya cýncan hæbbe ðe legerþrope on ne sý.
ðonne so he of ðam nýgan wællum hyr sneort f he
pille;

3. And sý ælcne georgwe teofunge gelære be Pente-
costen; 7 þa na eorþ þer to ma be Emouhte;

4. Gif hya ðonne þa teofunge geleartan nelle sý se
ge-cwæten habbaþ. fape ðar Cýniges genea to. 7 þer
Bisceoper. 7 þer mynsteres marreþneort. 7 niman u-
þence; ðone teofen wæð to ðam mynster ðe hit to ge-
býrnge. 7 tæcan him to þam nýghon wæð; 7 to wæle
mon þa eahta wæð on tþa. 7 so se & hlaford to heal-
fan. to healfan se bisceop. sý hit cýniges man. sý hit
ðegener; that is, in the old

Latine Copies: *Et Reddatur omnis Decimatio ad Matrem
Ecclesiam cui Parochia adiacet, de terra Thai-
norum & Villanorum, sicut a aratrum pera-
grabit.*

1. Si quis Thainorum sit qui in secundo suo Ec-
clesiam habeat ubi cimiterium sit, det ei tertiam
partem Decime sue.

2. Si non sit tibi atrium (but the Saxon hath
here the same word as before for cimiterium,
that is, legerþrope) det, ex suis nouem partibus,
Presbytero, quod uult.

3. Et omnis Decimatio iuuentutis reddita sit
ad Pentecosten; & Terre frugum, ad Equino-
ctium.

k Land
hlaford
to his.

1 Apud Draxton
in Hist. Termall.
fol. 54. in Biblioth.
Cottoniana.
in i. Barrenum seu
liberum cimiterium,
a Vide infra
§. IX. & X.

5. Si quis Decimam dare sicut diximus noluerit, adeat Præpositus Regis & Episcopi & Sacerdos illius Ecclesie, & reddant Ecclesie cui pertinebit Decimam suam; & Nonam partem dimittant ei qui Decimam suam detinuit; & octo partes in duo diuidantur. dimidium Domino, dimidium Episcopo; Sit homo Regis, sit homo Thaini. This Latine agrees well enough with the Saxon; although in this last *si quis*, for Episcopi & Sacerdos, Lambard hath & Episcopus & Sacerdos illius Ecclesie &c. But whereas the Translator vses the word Ecclesia only for Church; in the Saxon, that which he calls *Matrem Ecclesiam*, is denoted by calban mynre, and that Ecclesia; in *þ. 2. si quis Thainorum*, by Cynican; whence; our word Kirk, or Church, is framed. For the difference of Church and Minister here, somewhat where anon wee speak of Parishes of that time.

X. A Councell or a kind of Parliament held vnder King *Ethelred*, by the aduise of his two Archbishops, *Elfpæg* and *Wulfstan*, (about the yeer M. X.) is yet extant, wherein Laws are for Tithes. But because it remaines only a Manuscript of about the time of the Norman Conquest, the Preface of it shall be here first noted, that thence the autoritie of it may be the better vnderstood. It is inscribed with *Incipiunt Synodalia Decreta*. then begins with; Quodam tempore contigit vt Regis *Ethelredi* edito

con-

• Vide §. XII.
• XVII.

Lang
croyeld
and
p. 10. in the
Library of
the British
Museum
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p. 10. in the
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Chap. 8.

concrepante, Archipraefulumque *Alfegi* &
Wulffiani hortatu instigante, vniuersi Anglo-
 rum Optimates die Sancto Pentecostes ad lo-
 cum ab indigenis *Eanham* nominatum acciti
 sunt conuenire. Collecto itaque ibidem Chri-
 sticolarum coetu venerabiliom quamplurimo-
 rum de Catholice cultu Religionis recupe-
 rando, deque etiam rei statu publicae repa-
 rando vel consulendo plura & non pauca ve-
 pote diuinitus inspirati ratiocinando sermo-
 cinabantur. *Then follows some Constitutions
 about Monks, Abbots, Canons, and other of the
 Clergie. After which, the Councell goes on with,*
 Post hec igitur Archipontifices praedicti Can-
 uocata plebis multitudine collecta, Regis E-
 dicto supra scriptae omniumque consensu Ca-
 tholicorum omnibus communiter predica-
 bant vnum Deum colendum esse debere, Pa-
 trem videlicet &c. *And diuers Canons suc-
 ceed; and among them occurs, Nec Ecclesiae
 antiquitas constituta Decimis vel alijs pos-
 sessionibus praeuenturita ut notis, Oratorijs
 tribuantur; which very words are found in an
 elder Councell of Mentz, and in the Imperiall
 Capitularies. Then immediately follows, Deci-
 mationes Frugum & Vitulorum & Agnorum,
 necnon & Aratrales Eleemosynae, Ecclesiasti-
 caque munera Domino per singulos annos
 temporibus rependantur congruis. Eleomo-
 synae videlicet Aratrales quindecim diebus*
 Ec 3 post

" post Pascha petactis; Vituli quoq; & Agnicu-
 " li Decimales erga Pentecosten, Frugum verò
 " terræ Decimationes circa omnium festinita-
 " tem Sanctorum Ecclesijs persoluantur oppor-
 " tuns. To it, is ioind the most part of it in
 Saxon. but that Preface is wholly therein wan-
 ting. neither doth any thing in the Saxon an-
 swer to that, *Nec Ecclesia antiquitus constituta*
Est. But those Tithes are there reckoned among
 godes geughter, that is, things due unto God. and
 the Saxon text for them is; geogode reopunge be
 Pentecosten. 7 eopðæt ma he ealpa halgenamer-
 ran, that is, the Tribe of yong cattell is to be paid
 at Whisontide; and of fruits of the earsh at Al-
 hollows. and according to this, in an old Saxon
 collection of Christian dutie, *Ele man*, (saies the
 Autor) *weodunga gelaſe me ſube*; that is, *Let*
euery man pay his Tithes iustly. Those *Aratrales*
Eleemosyna were called *rath almerran*, that is,
Plough-almes; which was a peny to be paid of
 euery plough-land. and the *Ecclesiastica manera*
 were only the first fruits of Corne paid at S.
 Martins day; whereof before p. VIII.
 XI. In some Laws of K. *Ethelred* remai-
 ning in Abbot *Brampton* his Historie, we read.
 " Omnis Thainus Decimet quicquid habet.
 " and *Præcipimus vt omnis homo super di-*
 " lectionem Dei & omnium Sanctorum det
 " Cyricsecutum & rectam Decimam suam sicut
 " in diebus antecessorum nostrorum fecit quan-
 " do

q Exemplar item
 Saxonum repe-
 ritur in Codice
 vetustiss. Legum
 Saxon. in scriptis lau-
 data Bibliotheca.

r Major Leg.
 Saxonica in Bibl.
 Cottoniana.

f Hister. Iornal-
 den. fol. 65.

do melius fecit, hoc est, sicut aratrum peragrat-
 bit, decimam agram, & omnis consuetudo
 reddatur super amicitiam Dei ad matrem no-
 stram Ecclesiam cui adiacet, & nemo auferat
 Deo quod ad Deum pertinet, & predecesso-
 res nostri concesserunt. The inscription of
 those Laws amongst which these are found, is,
Hæc instituerunt Eðbelredus & Sapiētes eiu
quid Habam. By this, and that of Edgar before
 cited, it appears that the Tithes of every tenth
 acre according to the order of tithing the whole
 Farme, was to be paid to the Church, which al-
 so is made more plain in the next Law of King
 Knout.

XII. Gelaſte man (are the words of one
 of K. Knout's Laws made about M. XX.) gocer
 gepuhta æghwile geane rihtlice georne; þæt iſ riht-
 helmesſe ſiſtene niht oþer Eaſtan. 7 gegoſe teo-
 þunge be Pentecosten. 7 eoþ þæt ealra hal-
 gena mæſſan; 7 ƿiſ hƿa þonne þa teoþunge gelaſtan
 nælle. ſƿa ſe gecƿedan habbaþ. 7 iſ ſe teoþa æcep. eal
 ſƿa ſe riht hƿiſ geƿaþ. þonne ſaþe to ƿiſ Cýninges
 geſeƿa. 7 þaſ biſceopas, 7 þaſ lantwiteas, 7 þaſ myn-
 tſes mæſſesceort. 7 niman unþanceſ þonne teoþan
 oðel to þam mynſte he hit to gebýrge. 7 teacum
 him to þam nigodum oðel; 7 to oðle man þa eahta
 oðelas on ƿa. 7 þoſe lantwiteas to heaſum, 7 to
 heaſum ſe biſceop 7 iſ hƿiſ Cýninges man. ſƿiſ he
 genep; *this is* *anciently thus turned*; Reddantur
 Deo Debitæ reſtitutiones annis ſingulis, hoc

hoc

1. Leg. Cambr.
cap. 8.

u. Inſtitutio In-
 ſtitutio. folys. 8.
 Ma. Bibl. Cotton.
 ſed opimum ha-
 rum legum ex-
 exemplar. extra in
 Bibliotheca. Sco-
 reniſſ. Principis
 Magnæ Brit. ad
 D. Tard.

11^{est} Eleēmofyna carucarum, XV. diebus post
 12^{pascha}, Decimæ de nouellis gregibus in Pen-
 13^{tecosten}, terfenorum fructuum in festo om-
 14^{nium} Sanctorum. Si quis hanc Decimam da-
 15^{re} noluit sicut omnium nostrum commune est
 16^{institutum}, hoc est Decimam eorum sicut ara-
 17^{trum} peragrabit, eat prepositus Regis & E-
 18^{piscopi} & Domini ipsius terre cum Sacerdote
 19^{& ingrat}is auferant & Ecclesie cui pertinebit
 20^{reddant}. Nonam verò partem relinquant ei
 21^{qui} Decimam dare noluit. Octauas partes re-
 22^{liquas} in duo diuidant & sit vna medietas E-
 23^{piscopi}, alia terre Domini, siue sit homo Re-
 24^{gis} siue Thaini. with this *Latin*, the *Saxon* a-
 25^{greets}. and it is almost but a repetition of King
 26^{Edgars} Law for Tithes. and those two Para-
 27^{graphs} in King *Edgars*, the one touching a con-
 28^{ueyance} of a third part of the tithes to a Church
 29^{that} had right of Sepulture, the other concern-
 30^{ing} a Church that wanted that right, are also
 31^{repeated} (as many other Laws of the former a-
 32^{ges}) in those of King *Knuts*, which are called
 33^{Lege} 7 *Anglica* generally in the ancientest *Latin*
 34^{Copies} that I have seen.
 35^{XII.} The Copie of the Laws of *Edward*
 36^{the} Confessor, that bears this title; *Lages bo-*
 37ⁿⁱ Regis *Edwardi* quas *Guilielmus* *Bastardus*
 38^{postea} confirmauit, *habb this for Tithes*: De
 39^{omni} annona, Decima garba Deo debita est &
 40^{ideo} reddenda. Et si quis gregem equarum
 41^{habuerit},

11^{est} Eleēmofyna carucarum, XV. diebus post
 12^{pascha}, Decimæ de nouellis gregibus in Pen-
 13^{tecosten}, terfenorum fructuum in festo om-
 14^{nium} Sanctorum. Si quis hanc Decimam da-
 15^{re} noluit sicut omnium nostrum commune est
 16^{institutum}, hoc est Decimam eorum sicut ara-
 17^{trum} peragrabit, eat prepositus Regis & E-
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 19^{& ingrat}is auferant & Ecclesie cui pertinebit
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 26^{Edgars} Law for Tithes. and those two Para-
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y In Biblioth.
 Saxonum Pro-
 cip.

11^{est} Eleēmofyna carucarum, XV. diebus post
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 32^{ges}) in those of King *Knuts*, which are called
 33^{Lege} 7 *Anglica* generally in the ancientest *Latin*
 34^{Copies} that I have seen.

" habuerit, pullum reddat Decimum. Qui v-
 " nam vel duas habuerit, de singulis pullis sin-
 " gulos denarios. Similiter qui vaccas plures,
 " habuerit, Decimum vitulum. Qui vnam vel
 " duas, de vitulis singulis obolos singulos. Et
 " qui caseum fecerit, det Deo Decimum, si verò
 " non fecerit lac decima die. similiter agnum
 " Decimum, vellus Decimum, caseum Deci-
 " mum, butyrum Decimum, porcellum Deci-
 " mum. De Apibus verò similiter Decima com-
 " modi. Quin & de bosco, de prato & aquis &
 " molendinis, parclis, viuarijs, piscarijs, virgul-
 " tis & hortis, & negotiationibus & omnibus
 " rebus quas dederit Dominus. Decima pars ei
 " reddenda est, qui nonem partes simul cum
 " Decima largitur. Qui eam detinuerit per Iu-
 " stitiam Episcopi & Regis (si necesse fuerit) ad
 " redditionem* arguatur. Hæc enim prædicauit
 " B. Augustinus, & concessa sunt à Rege Baro-
 " nibus & populo. But howeuer those Laws
 are attributed to the Confessor, it is certain that
 as the Ordinarie Copies of them are, and as they
 speak in the published Volume of *Saxon Laws*,
 they are not without many mixtures of some-
 what later transcribers.

XIV. In a Synod,* written in *Saxon*, & held a-
 bout the Cōquest, diuers Laws preceding, about
 the punishment of crimes by fasting VI. VII. X.
 yeers together with bread and water, a perswas-
 ion follows for Almes &c. in it we read *teofge on*

* *Donc adigerat.** *Revisio M. apud
F. C. Rob. Curm.*

gover etc eal þ he age. that is, *Let Tine be paid of all that is possesst though the Lords bountie.*

b In Excerptis
M. apud eun-
dem.

c Apud G. Mal-
mesb lib. 2. de gof.
Pontific. fol. 119. b.
and, 1102.

XV. Out of a *Ms.* of *Excester* I have seen transcribed a Canon of a Councell held at *Windsore*, some yeers after the *Norman Conquest* (I think vnder *Lanfrank*) in these words: *Vt Laici Decimas reddant sicut scriptum est.*

XVI. In a Convocation at *Westminster* held in 3. *Hen. I.* vnder *Anselm* Archbishop of *Canterburie*, and *Girard* Archbishop of *Torke*, for both Provinces, it was ordalnd *Vt Decima non nisi Ecclesys dentur.* It was not only a Synod of the Clergie; but Royall autoritie with the assent of the Baronage (at least of the greater Nobilitie) was ioind with it for thus speaks the Monk of *Malmesburie* relating it. Anno Domini Incarnationis 1102. quarto autem præfulatus Paschalis summi Pontificis, tertio regni Regis gloriosi Henrici Anglorum, ipso annuente, communi consensu Episcoporum & Abbatum & Principum totius regni, adunatum est Concilium in Ecclesia beati Petri in Occidentali parte iuxta Londoniam sita, in quo præsedit Anselmus &c. and then. Huic conuentui affuerunt, Anselmo Archiepiscopo petente à Rege, Primates regni, quatenus quicquid eiusdem Concilij autoritate decerneretur, vtriusq; Ordinis concordia curâ & sollicitudine ratum servaretur. Sic enim necesse erat; quia multis retrò annis, synodali cultu-

“ ra

ra cessante, vitiūrum vepribus succrescentibus, Christianæ religionis seruor in Anglia nimis refrixerat. and agreeing to this reason is a passage in the 4th Synod of London, held vnder Lanfrank Archbishop of Canterbury in 9. Will. 1. *Et quod* (are the words) *multis retro annis in Anglico regno vsus Conciliorum obsoluerat, renouata sunt &c.* that Canon seems to haue been made against arbitrarie consecrations of Tithes then practised, whereof anon largely.

XVII. The Laws of Henrie the first haue one title, *De placitis Ecclesie pertinentibus ad Regem*, and vnder that, are these words: *Si quis rectam Decimam superteneat, vadat p̄positus Regis & Episcopi & terre Domini cum Presbytero & ingratia auferant & Ecclesie cui pertinebit reddant, & nonam partem relinquunt ei qui Decimam partem dare noluit.* according to those of King Edgar and King Knout before related.

XVIII. Alberique Bishop of Ostia, Legat in England to Pope Innocent the second, in 3. of King Stephen, held a Synod at London, and in that (as I haue seen it transcrib'd out of a book of Worcester) this Canon is, *De omnibus Primitijs rectas Decimas dari Apostolica auctoritate precipimus, quas qui reddere noluerit anathematis in eum sententia proferatur.* Primitia must, it seems, be here vnderstood for euery new yeers encrease.

XIX. Vnder Henrie the second a Pontificall Decree was sent to all the Bishops of the

4 Apud Emd.
lib. d. 8. fol. 117. d.
& in Epist. Lan-
franci Ms. in Bibl.
Cottoniana.

6 In Ad. Rub.
Senecarij Ms.
cap. 12.

f. 9. IX & XII.

8 In Eusebio
Ms. in Bibl. Har-
leian.

h. Extr. th. de Dec.
c. 5. per omnes & in
App. ad Con. II.
Lan. de Decim.

Prouince of *Canterburie* (about the yeer M. C. LXX.) by Pope *Alexander* the third commanding^b them that they should admonish all men in their seuerall Dioceses, & *si opus fuerit*, as the words are, *Sub excommunicationis districtione compellere, ut de prouentibus Molendinorum, Piscariarum, Feno, & Lana, Decimas Ecclesijs, quibus debentur, cum integritate persoluant.* the direction of it was, *Cantuariensi Archiepiscopo & eius suffraganeis.* To this you may adde that other¹ of the same Popes to the Bishop of *Winchester*: *Mandamus, quatenus Paracianos tuos de Apibus, & de omni fructu Decimas persolvere Ecclesiasticam districtione compellas.* Both these were afterward made part of *Gregories* Decretalls, and are of force to this day in the Canon Law of the Church of *Rome*.

1. Extr. de Dec.
c. 5. per omnes & in
App. ad Con. II.

XX. In 21. of the same King *Henrie* the second, *Richard* Archbishop of *Canterburie* held a Prouinciall Synod at *Westminster*, in which were neer all the Bishops and Abbots of his Prouince, as also the two Kings, the father and the sonne. there, diuers Constitutions out of old Councells and Popes Decrees were published to be obserued in his Prouince. among them, one is out of a Synod at *Rosne*, in^b these words: Omnes Decimæ Terræ siue de frugibus siue de fructibus, Domini sunt & illi sanctificantur. sed quia multi modò inueniuntur Decimas dare nolentes; statuimus, ut iuxta Domini
“ Papæ

2. Apud Regnum
de Rosne in App.
ad part. 2. fol.
111. a.

Ckap. 8.

“ Papæ præcepta admoneantur semel, secundo,
 “ & tertio, vt de grano, de vino, de fructibus
 “ Arborum, de foetibus animalium, de lana, de
 “ agnis, de butyro & caseo, de lino & canabe &
 “ de reliquis quæ annuatim renouantur, Deci-
 “ mas in egra persoluant. quod si commoniti
 “ non emendantur, anathemati se noderint
 “ subiacere.

XXI. Hubert Archbishop of Canterburie
 by his power Legatin, receind from Pope Cele-
 stin the third, in 6. Rich. I. held a Provinciaall
 Councell for the Prouince of Yorke, and there
 in one of the Canons thus speaks for Tithes.
*Cum Decima sit tributa egentium animarum &
 ex præcepto Domini dari debeant, non est reddentis
 eas diminuere. Statuimus itaq; vt de his quæ reno-
 uantur per annum, cum omni integritate Decime
 debite & consuete conferantur, ita vt in primis
 Decime absq; vlla diminutione Ecclesie dentur,
 postmodum de nouem partibus mercedes messorum
 & aliorum seruientium pro arbitrio soluentis tri-
 buantur.*

XXII. The same Archbishop Hubert in 2.
 of K. Iohn, Generale celebrauit concilium Lun-
 donijs apud Westmonasterium contra prohibitionem
 Galfridi filij Petri Comitis de Essexæ tunc tempo-
 ris summi Iusticiarij Angliæ. for it appears that in
 those elder times there was great controuersie
 between the King, in whose right the Chief Iu-
 stice of England here sent out his prohibition,

Ff. 3 on 3 and

1 Apud eundem
 par. 2, fol. 430.

m Apud eundem
 par. 2, fol. 437 b.
 & 438 a.
 n Consulas lit. 1
 de 10. Ed. 2. in
 vol in quo Tur-
 gus Dunc'men-
 sis reperitur in Bi-
 blioth. V. C. Tho.
 Allep. Oxon. &
 41 Hen. 3. in
 nat. Burton apud
 in eundem.

o. Stat. 25. Hen. 3.
cap. 19.

and the Archbishop touching this point, whether the Archbishop, either as Archbishop or as Legat, might hold a Prouinciall or Nationall Councell without autoritie from the Crown; but that is now declared cleer and so practised that he may not. In that Councell, notwithstanding the prohibition, he ordaind thus for tithes.

“ Cum Deo & Sacerdotibus Dei Decimas dandas, Abraham factis, & Iacob promissis innu-
 “ ent, & autoritas veteris & noui Testamenti
 “ necnon & sanctorum Patrum statuta declarent
 “ Decimas de omnibus, quæ per annum reno-
 “ uantur præstandas; id inuiolabiliter decerni-
 “ mus obseruandum, ita quod occasione merce-
 “ dis seruientum vel messorum decima pars non
 “ minuatur, sed potius integre persoluatur.
 “ Habeant etiam Presbyteri potestatem ante au-
 “ tumnum excommunicandi omnes fraudatores
 “ decimarum suarum, & eosdem secundum for-
 “ mam Ecclesiasticam absoluendi. Huic adjici-
 “ mus sanctioni, vt de terris nouitè cultis, non
 “ aliàs dentur decimæ quàm Ecclesijs Parochia-
 “ libus infra quarum limites terræ illæ de quibus
 “ Decimis perueniunt excoluntur. Detentores
 “ verò Decimarum, iuxta Rothomagensis Con-
 “ ciliij constitutum, si semel secundò & tertio
 “ commoniti, excessum suum non emendauerint
 “ vsq; ad satisfactionem condignam anathematis
 “ vinculo seriantur. saluo in omnibus S. S. R. E.
 “ honore & priuilegio. which *Saluo* is to euery
 of his Canons.

XXIII. Among the Decretall Epistles of Pope Innocent the third, one P is directed
 “ Cantuariensi Archiepiscopo, vt Ecclesijs Pa-
 “ rochialibus iuste Decimæ persoluantur; and
 “ thus speaks. Peruenit ad audientiam nostram
 “ quod multi in Doceſi tua Decimas suas inte-
 “ gras, vel duas partes ipsarum non illis Eccle-
 “ sijs in quarum Parochijs habitant, vel vbi præ-
 “ dia habent, & à quibus Ecclesiastica percipiunt
 “ Sacramenta persoluant: sed eas alijs pro sua
 “ distribuunt voluntate. Cum igitur inconueni-
 “ ens esse videatur & à ratione dissimile, vt Ec-
 “ clesiæ quæ spiritualia seminant, metere non de-
 “ beant à suis Parochianis temporalia, & habere;
 “ fraternitati tuæ autoritate præsentium indul-
 “ gemus vt liceat tibi super hoc non obstante
 “ contradictione vel appellatione cuiuslibet, seu
 “ consuetudine hætenus obseruata, quod Cano-
 “ nicum fuerit ordinare, & facere quod statueris
 “ per Censuram Ecclesiasticam firmiter obser-
 “ uari. Nulli ergo &c. confirmationis &c. Da-
 “ tum Lateran. 11. nonas Iulij.

p. Innot. 3. de E-
 pist. Innoc. lib. 2.
 pag. 453 edit. Ca-
 loniens.

XXIV. In a collection of diuers Constitutions for the English Church, out of Councells and others, titled only *Constitutiones cuiusdam Episcopi*, and writen about Hen. the thirds time, one of Tithes occurs. *Decimas de omnibus que renouantur per annum & maximè consuetas, dan- das decernimus & potissime de molendinis & piscarijs & fanis & apibus & de terris arabilibus*

q In vol. 2. qus
 Annot. Barro.
 apud D. C. Tho.
 2. lib. 2. c. 1.

Et ad prata posseda vel ad pasturam redactis, ita ut occasione mercedis seruientum vel messorum decima parte non frustrantur quo minus eam plene percipiant. Detentores vero earundem Decimarum si semel, secundo, Et tertio commoniti excessum suum non emendauerint; concedimus quod per capellanos locorum vsque ad satisfactionem congruam excommunicationis vinculo feriantur. Cum autem hi qui decimas detinuerint vel subtraxerint ad poenitentiam accesserint, non admittantur nisi per se vel per manum sacerdotis ei, cui decimae debentur, satisficiant competenter.

2 Conf. Eborac.
Ms.

XXV. A Constitution for due payment of Tithes was made about 30. Hen. 3. by *Walter Gray* Archbishop of *York*. I haue only a note of it which I took out of the Ms. but the words I could not now transcribe for want of the Copie. the Copie it self I once saw in the Librarie of *Mr. Henrie Sauill* who is now with God.

1 Vide *Yndrodo*
Primum. Conf. etc.
de Dec. a quoniam
propter imple-
tionem.

1 Ms. apud D. C.
T. Allen, Oxon.

XXVI. The chiefest of the *English* Canon Laws, made for Tithes (both prediall and personall) is that commonly attributed to a Council of *Robert Winchelsey* Archbishop of *Canterburie*, held in 23. *Ed. 1.* at *London*; some Copies referring it to Archbishop *Boniface* and the time about 30. *Hen. 3.* or to an old Synod of *Merton*. But in the Synod of *Merton* held 42. *Hen. 3.* no part of it is extant. That I examined in the Annalls of the Abbey of *Burton* where the Canons of that Synod are at large collected. yet in

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in the *Pupilla & oculi*, written by *Iohn de Burgo* : *Part 2. cap. 9.*
 Chancelor of *Cambridge* in M.CCCLXXXV.
 it is called *Constitutio facta apud Morten per om-*
nes Episcopos Angliae. These are the words of it;
 as it remains in the body of the Provincial Con-
 "stitutions. Quoniam propter diuersas con-
 "suetudines in petendo Decimas per diuersas
 "Ecclesias inter rectores Ecclesiarum & Paro-
 "chianos suos, rixæ, contentiones, scandala &
 "odia maxima multoties oriuntur. Volumus
 " & statuimus quod in cunctis Ecclesijs per
 "Cantuariens. Prorinciam constitutis, ynifor-
 "mis sit petitiio Decimarum & proventuum Ec-
 "clesiarum. Imprimis volumus quod decimæ
 "de frugibus, non deductis expensis, integræ &
 "sine aliqua diminutione soluantur : & de fru-
 "ctibus arborum : & de seminibus omnibus, &
 "de herbis ortorum nisi Parochiani compe-
 "tentem fecerint redemptionem pro talibus de-
 "cimis. Volumus & statuimus etiam quod de-
 "cimæ de scenis vbicunq; crescant, siue in mag-
 "nis pratis siue in paruis siue in cheminis exi-
 "gantur, & prout expedit Ecclesie persoluan-
 "tur. De nutrimentis autem animalium scilicet
 "de agnis, Statuimus quod pro sex agnis & in-
 "fra, sex oboli dentur pro decima. Si septem
 "sint agni in numero, septimus agnus detur
 "pro decima rectori, ita tamen quod rector Ec-
 "clesie qui septimum agnum recipit, tres obo-
 "los in recompensationem soluat parrochiano
 mod.

3 quo decimam illam recipit. Qui octauum
 4 recipit, det denarium. Qui vero nouum det
 5 obolum parochiano vel expectet rector usque
 6 ad alium annum donec plenarie Decimum a-
 7 gnus possit recipere si maluerit: & quum ita
 8 expectat semper exigit secundū agnum me-
 9 liorem vel totum ad minus de agnis secundi
 10 anni: & hoc pro expectatione primi anni. Et
 11 ita intelligendum est de Decima lanæ. Sed si
 12 oues alibi in hyeme & alibi in estate nutrian-
 13 tur diuidenda est decima. Similiter si quis me-
 14 dio tempore emerit vel vendiderit oues, &
 15 certum sit a qua parochia illa oues venerint:
 16 earundem diuidenda est decima. sicut de re-
 17 quæ sequuntur duo domicilia. Si autem incer-
 18 tum fuerit, habeat illa Ecclesia totam deci-
 19 mam infra cuius limites tempore tonsionis in-
 20 veniantur. De Lacte vero volumus quod de
 21 eima soluantur dum durat, videlicet de casto
 22 tempore suo. Et de lacte in autumno & hye-
 23 me nisi parochiani velint pro talibus facere
 24 competentem redemptionem, & hoc ad valo-
 25 rem decimæ & commodum Ecclesiæ. De pro-
 26 uentibus autem molendinorum volumus quod
 27 decima fideliter & integrè soluantur. De pa-
 28 sturis autem & pascuis tam non communibus
 29 quam communibus statuimus quod decimæ
 30 fideliter persoluantur: & hoc per numerum
 31 animalium & dierum ut expediat Ecclesiæ. De
 32 pileationibus & spibus sicut de omnibus alijs
 33 bonis

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et bonis fuisse acquisitis non renouantur per an-
 et num, statimque quod decimas soluantur de ex-
 et igitur debito modo. Statimque etiam quod
 et decimæ personales soluantur de officiis &
 et mercatoribus scilicet de lucto negotiationis
 et Similiter de carpentariis, fabris, cementariis
 et textoribus, pandor, arceibus, & omnibus al-
 et ijs operariis stipendiariis, et videlicet den-
 et Decimas de stipendiis suis nisi stipendiarij ipsi
 et aliquid certum velint dare ad opus vel ad lu-
 et men Ecclesie si rector ipsius Ecclesie placue-
 et rit. *then a word or two of Monasteries, & of*
 et *which,* Sed quoniam inveniuntur multi Decim-
 et mas sponte dare nolentes, Statuimus quod
 et parochiani moneantur primo secundo & ter-
 et tio vt decimas Deo & Ecclesie fideliter sol-
 et uant. Quod si non emendauerint primo ab in-
 et gressu Ecclesie suspendantur, & sic demum ad
 et solutionem decimarum per censuram Eccle-
 et siasticam si necesse fuerit compellantur. Si au-
 et tem dicte suspensionis relaxationem vel abso-
 et lutionem petierint: ad ordinarium loci mit-
 et tentur absoluedi: & debito modo puniendi.
 et Rectores autem Ecclesiarum seu Vicarij aut
 et Capellani annui qui predicas decimas pre-
 et dicto modo propter formidinem hominum
 et seu fauorem, timore Dei postposito, et predi-
 et ctum est, cum effectui non petierint pena su-
 et spensionis inuidentur donec dimidiam mar-
 et cam argenti pro sua inobedientia Archidia-
 et

y In Biblioth.
autoris.

conor loci persoluant. And then follow two other Constitutions, vnder *Winchelsey's* name, for some more peculiar order in payment. But that first referd to him, is in a Ms. 7 (written of about the time of *Henry the first*) of the *English Episcopall Constitutions*, severally thus titled, *Constitutio Domini Stephani de Langtone Archiepiscopi edita de modo Decimandi*. *Stephen of Langton* was Archbishop vnder King *John*. But it is not extant in the Synod of his time.

2 Extra, in Con-
stit. Prout, lib. 3.

2 Conqueritur et-
iam de hac iniu-
ria Io. de Athen-
is Confis. Oribeni
e. mandata Dei.
verb. Iustitiam
sancti angelus.

XXVII. In a Councell at *London* vnder *Simon Stepban*, Archbishop of *Canterburie*, held in 13. *Ed. 3.* a Canon is against such as hindered Church-men from taken their Tithes, either by keeping them and their servants from entering into the Land, or by exacting * *Gloves, Stockings*, or some such bribes, before they would permit them take that right, which God, as it is there inserted, *in signum vniuersalis Domini sibi reddi precepit. & pro sua cultu Clerici assignavit*. All such offenders are branded with Excommunication: and another Constitution of a Councell of *Pauls*, held in 17. *Ed. 3.* vnder *John Stretford* Archbishop of *Canterburie*, is to the selfe-same purpose.

2 Extra, in Bl.

XXVIII. For Tithe of *Copis Wood*, or *Silua cedua*, also in that of *Stretford*, was a * Canon in these words: *Quamquam exsoluentibus bene Decimas Deus frugum omnium abundantiam & possessionum promiserit vbertatem:*

" ratem : tamen dolentes referimus quod non
 " nulli nostra Prouinciæ contra testamenti ve-
 " teris atque noui doctrinam de syluis suis cæ-
 " duis & lignis arborum cæduarum excisis circa
 " quæ minus, quàm circa fructus agrorum, labo-
 " ris impendunt, Decimas Deo & Ecclesijs qui-
 " bus debentur notoriè, propter hoc quod ipsas
 " in præteritum non dederunt, soluere contra-
 " dicunt, quòd estimant idcirco licere quod Le-
 " gem moris de longa inualuisse consuetudine
 " arbitrantur, in dubium etiam reuocantes quid
 " silua cædua sit censenda. Nos igitur aduer-
 " tentes quod si sua portione Ecclesia sit de-
 " fraudata diutinè, crimen præterea non minui-
 " tur sed augetur : ac fames & penuria omni-
 " umque rerum egestas opprimunt bene Deci-
 " mas non solvente ; huiusmodi declaramus
 " pouisione Concilij Siluam Cæduam, illam
 " fore quæ cuiuscunque existens generis arbo-
 " rum in hoc habetur vt cedatur, & quæ eti-
 " am succisa rursus ex stirpibus aut radicibus
 " renascitur ; ac ex ea Decimam utpote rea-
 " lem & prædialem Parochialibus ac Matrici-
 " bus Ecclesijs persoluendam, nec non siluarum
 " possessores huiusmodi ad præstationem Deci-
 " marum lignorum ipsorum excisorum in eis,
 " sicut feni & bladorum omni censura Ecclesi-
 " astica fore Canonice compellendos. By this,
 " Tithe of all kind of Wood was payable. But in
 " the Parliament with which that Conuocation

was held, a Petition was exhibited by the Commons, *Que nul homme fait eret en plee en Court Christien par Dismes de bois ou de fount bois si nous en lieux ou tielx Dismes soloient estre donez.* And the Answer was, *Soit fait de cella auxi come il ad este fait einz cez beures.*

b Rot. Parl.
21. Ed. 3. art. 9.

XXIX. And the yeer following, in the next Parliament, a complaint was against that Constitution by the Commons. Item pria le Commen que come Constitution soit fait per les Prelats a prendre Dismes de choseun maniere de Bois quel chose ne fait vnques vsee, & que niefz & semes poent faire testament que est contre reson. que plese per lui & per son bon conseil ordainer remede, & que son peuple demoege en mesme l'estate qu'ils soloient estre en temps de tous ses progeniteurs, & que Prohibitions soient grantees a touz ceux que sont empledés de Dismes de bois sans auoir consultation. Wich was so ootherwise answered, but with, *Le Roy voet que ley & reason ent soient faits.*

c Rot. Parl.
21. Ed. 3. art. 48.

XXX. Three yeeres after, in 21. Ed. 3. a Petition was touching the same matter put thus in by the Commons. Item monstre la Commune come nadgairs Leroeuesque de Canturbury & les autres Prelats ordenerent vne Constitution a doner Dismes de subbois venduz tant solement, la ou auant ces beures nulles Dismes furent donez, ore les gentz de Seint Esglise per force de la Constitution pernent & demandent les Dismes auxibien de gros bois come de subbois venduz & nient venduz e-
contre

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contre ce qu'ils ont usé, puis temps de memoire, a
 grant damage de la Commune de quoi ils prient re-
 medio del un point & del autre. To this is answer
 red. L'aveus que de Canturbury & les autres E-
 vesques ont responduz, que ceste Disme n'est de-
 mandee par raison de la ditte Constitution fors que de
 subbois. But I well conceivue noe why they come
 plain of the Constitution, as made only for the
 Tithe of Wood sold. no such thing appeares in
 it, that iustifies their supposition. *15. Ed. 3. c. 2.*
 XXXI. This taking of Wood, and of such
 other things as were not of Custome paid, still
 vexed the Commons. And therefore againe in a
 Parliament of 25. Ed. 3. they exhibite this Peti-
 tion. Item priores Commone, que se la Clergie en
 droit des Dismes de haut bois & semblant d'autre
 chose riens demandent ou attemptent de navel
 fors que sollement oco & on les lieus d'ore ils ont
 este d'aucions temps seisis come en le droit de leur
 Esglises, que pleise a nostre Seignior le Roy ent
 grant Prohibition sans Consuleation a ceux, ceuz
 que le voillens demander en tel bar, & que les
 dites gens de S. Esglise soient defendez a deman-
 der Dismes de grosse bois. Here the Commons
 would have had such a libertie of discharge of
 Tithes not vsually paid, as the Philippine in
 France, and the like Edicts of some other Na-
 tions give the subiect. But the answer was, Le
 Roy & son Conseil se voillens de ceste Petition
 ausers.

d. 2. a. Pol. F. 8.
 Hill. 25. Ed. 3.
 m. 37.

XXXII. But

XXXII. But vpon new Petition, by the Lords Temporall and Commons in the Parliament of 45. Ed. 3. it was enacted (as you see in the published Statutes, agreeing with the Record) That Tithes should not be exacted of great Trees, being of X X. yeeres growth, or aboue, and that vpon a Suit commenced in the Spirituall Court for such Tithes, a Prohibition should be granted, as it had been in former time also vsed. but that vse, it seemes, had been somewhat discontinued, through a reuerence giuen to that Synodall Canon of Archbishop Stretford. Although in 50. Ed. 3. fol. 10. b. Belknap saies, That it was neuer seen, that Tithes had been demanded of great Trees and of Timber. This Statute hath had still force in practice to this day.

*a Ploud. Comm.
fol. 470. b. Mem. 6.
fol. 56. d. e.*

XXXIII. Yet, notwithstanding this Statute, the Clergie were not so contented; but vnder pretence that it was not indeed, by sufficient autoritie, made a Statute, but only an Ordinance (the contrarie whereof appears both in the Roll and in the consent of following time) oft times afterward brought the Temporaltie in question vpon their Canons; insomuch, that in the Parliament of 47. Ed. 3. a Bill was put in by the Commons, reciting that of 45. Ed. 3. and then relating, that *les persons de Seint Esglise entendants que cef Ordinance ne resireint my leur aunciene accrochemens, surmettants que ce ne fuisse* my

*f 7. d. Part.
47. 1. 3. 21.*

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my afferme pur Estatut, sont occasions in Court
 Christien a contrarie del Ordenance suisdit a grane
 damage del people, per qui pleise a nostre Seignior
 le Roy d'asfermer la dite Ordenance pur Estatut a
 durer pur temps auener, & que Prohibition especi-
 all sur mesme Lestatut de ceo soit fait en la Chan-
 cellerie defendant que eux ne tignent plee en Court
 Christien des Dismes de bois del age auant dit, that
 is, of XX. yeeres. The answer hereto was, Soit
 tiele Prohibition grantee come ad este vse d'aunci-
 en temps. Thus did the Clergie and Commons
 so differ touching the execution of the Canons;
 and insomuch, that afterward also the Com-
 mons put in a Bill, & *Que nul Estatute ne Orde-*
nance soit faite ne grantee au Petition du Clergie si
ne soit per assent de voz Commens. Ne que vous
 dites Commens ne soient obligez per nulles consti-
tutions qu'ils font pur leur auantage sanz assent de
voz dites Commens. Car eux ne veuillent estre ob-
ligez a nul de voz Estatutz ne Ordinances sanz
sanz leur assent. But the answer was only thus,
 Soit ceste maniere declaree en speciall. This by the
 way.

8 An. Parl
31. Ed. 3. an. 46.

XXXIV. Here may be remembered that
 agreement in the Parliament at Salisburie, *Quod*
consultationes fieri debent de silua cadua, eo non
obstante quod non renouatur per annum. But to
 what Parliament to refer that agreement, expres-
 sed by *Concordatum fuit coram Consilio Regis in*
Parlamento &c. I sufficiently know not, vnlesse

h Regis Orig.
fol. 4. m.

to that of 7. Rich. 2. held at *Salisbury*, the Rolls whereof hath nothing of it.

i Rot. Parl.
5. Hen. 4. art. 65.

XXXV. In 5. Hen. 4. a Bill was put in by the ⁱ Commons, against the exaction of Tithes of Quarries of Stone and Slatt. Thus it speaks. *Item prient les Commens que come plusors lieges nostre Seignior le Roy sont souent sous vexiz & trauailleux per Persons & Vicaires de Seint Esglise per Citations & Censures de Seint Esglise pur Dismes de Peres & Scolattes oueres & trabez hors de Quares de sicomme nul Disme de nul tiel Pierre ne Scolatte vnques ne feust demande de nulle Disme ent paie, que pleise a granter que si ascun Prohibition soit fait en le cas que nul Consultation soit grant a contrarie. Hereto the answer was, Le Roy s'aduifera. But you may see hereof more in the ancient Opinions of the Iudges, deliuered in the ^k Register and ⁱ Fitzherbert.*

k Orig. fol. 59. b.
i Rot. Parl. fol. 93.
2. G.

XXXVI. In 27. Hen. 8. chap. 20. it is enacted by Parliament, That through all the Kings dominions, euery subiect according to the Ecclesiasticall Laws and Ordinance of this Church of England, and after the laudable Vsages and Customs of the Parish or other place where he dwelleth or occupieth, shall yeeld and pay his Tithes &c. And some other speciall courses for recovery of Tithes, are in that Act ordained.

XXXVII. By the Statute of Dissolution of Monasteries of 31. Hen. 8. chap. 13. it was enacted, That the King and his Patentees should hold

hold the Possessions of the dissolved Monasteries discharged and acquitted of payment of Tithes, as freely, and in as large and ample manner, as the Houses of Religion held them at their time of the dissolution.

XXXVIII. After the dissolution of Monasteries, to which, diuers Tithes and Parish Churches had been appropriated, and were now serled in the Crowne, and thence conueyed into Lay hands, an Act was made in 32. Hen. 8. cap. 7. commanding euery man, fully, truly, and effectually, to diuide, set out, yeeld or pay all and singular Tithes and Offerings, according to the lawfull Customes and Vsages of the Parishes and Places where such Tithes or Duties shall grow, arise, come, or be due. And remedie is giuen for Ecclesiastique persons before the Ordinarie; and for Lay men, that claimed appropriated Tithes by grant from the Crown, in the secular Courts, by such actions as vsually Lay possessions had been subiect to.

XXXIX. By the Acts of 27. Hen. 8. cap. 21. 37. Hen. 8. cap. 12. and the Decree made vpon them, the Citizens and Inhabitants of London and the Liberties were commanded to pay their Tithes to the Parsons, Vicars, and Curats of the Citie, according to a rate of the rents of their houses; that is, two shillings nine pence for euerie pound. and that if no rent be reserued, the Tithe should be duly paid, according to what

their houses had been last letten for. and according to that also, are owners bound to pay. But a Prouiso is in the Decree, That where a lesse summe then after two shillings nine pence the pound hath been accustomed to bee paid for Tithes, in such places the former custome should be continued. And some other particulars are in it, which are too long to be here transcribed. you may easily see it whole. But anciently, in *London*, on euery Sunday and other principall Feast day; the chief maintenance of the Ministers was encreased, by a farthing offered out of euery renne shillings of rent. *Ex Ordinatione antiqua*, sayes *Lindwood* ^m, (and that Ordinance, as I haue heard, was either made by *Roger Niger* Bishop of *London*, in 13. Hen. 3. as a new one, or as a confirmation of former vse. as which of these, I purposely abstain here to enquire) *in dicta Ciuitate, tenentur singulis Dominicis diebus & in principalibus Festis & Sanctorum Apostolorum & aliorum quorum Vigilie ieiunantur offerre pro singulis X. solidis redditus domus quam inhabitant vnum quadrantem*. And the L. I. I. farthings so yearly paid on Sundaies only, came so neere to the iust Tenth of the rent, that they were thought on as a Tithe paid; the other being reputed rather by the name only of Offerings. Which you may see in the same *Lindwood*, where he disputes the question, whether those farthings excused the Citizens from personall Tithes of their gaines; and

m In Consil.
Prouiso. etc. de
Dec. c. Sancta,
§. Negotiationum,

and concludes; that they did not. But before these Acts and the Decree, no Tithes, as Tithes, were generally paid in that Citie. in some places they were, as in the libertie of *S. Martins le Grand*, which is rather in *London* then of it. neither can I but here remember that custom of the Eastern Church thus maintained chiefly with Offerings, or *καταβολαί*, as they called them, which specially appears in the answer of *Theodore Balsamen* Patriarch of *Antiochia*, to *Mark* Patriarch of *Alexandria*, touching the quantitie of what was to be offered. He tells him, that no certain quantitie is appointed by the Canons, and that through inequality of mens estates (none of them giuing any such part to the Church as that it could discover their abilities) which permits not a regular certaintie, they were contented with what custom and free bountie of the giuers bestowed: *ὡς δὲ (λαίος ἔστω) ὁ καὶ περὶ τούτων ἀποκρίσας ὁ ἱερεὺς τῶν ἐκείνων ἐκκλησιῶν (καὶ ἀποκριθεὶς τῷ αὐτῷ ὁ ἐκείνους ἐκκλησιῶν ἀποκριθεὶς τῷ αὐτῷ) ἀπεκρίθη τῷ αὐτῷ ὡς περὶ τῶν ἐκείνων ἐκκλησιῶν* which is in substance the same before in *English*.

XL. In 2. and 3. *Ed. 6. chap. 15.* it was enacted that all prediall Tithes should be thenceforth paid as of right they had been within forty yeers next preceeding, or according to custom ought to haue been, with allowance of Privileges lawfull Prescriptions or Cōpositions reall. and personall Tithes of gain by merchandise and

n Vide 16. Ed. 3.
quare impedit
147. 3. Ed. 3. fol.
13. a. Grants case
in Repert. 11. fol.
16. a.

o In Respons. 57.
inter monumenta
Iuris Græci-Ro-
manæ edit. à Leun-
clavius & Frobenio.

artifice in such places, and as within X L. yeers preceding they had been accustomably vsed to be paid, are commanded to be paid yeerly at or before Easter. Other particulars and the remedies giuen by the Act may be easier found in it, then I can transcribe them.

X L I. To these may not amisse be added those Laws for Tithes, proposed by the V I I I. persons chosen to begin a new body of Canon Law for *England* in 5. *Ed. 6.* according to the first purpose of the Statut of 25. *Hen. 8. cap. 19.* (which was seconded also by the Statut of 3 and 4. *Ed. 6. cap. 11.*) whereby X X X I I. persons assigned by the King should haue made it. neither were those V I I I. to haue giuen sufficient autoritie to it according to those Statuts, without approbation of X X X I I. afterward that should haue censured their reformation. The V I I I. were *Thomas Cranmer* Archbishop of *Canterburie*, *Thomas* Bishop of *Elie*, *Richard Cox* the Kings Almosner and *Peter Martyr* Doctors of Diuinitie, *William May* and *Rouland Tailor* Doctors of Law, and *Iohn Lucas* and *Richard Goodersk* Esquires. In what they proposed, is found a constitution in the Kings name that all predial tithes should be paid in kind to the Ministerie integre & explete (with an exception of timber Trees of X X. yeers growth) as also of the profits of Milles, of Turbaries, Cole-mines, Quarries of stone and all other of like kind. Of all Agistments also

also Tithes are there payable, and of the encrease of all kind of beasts, wild and tame; of fish, of butter, cheefe, milk, wool, wax. and the Statute of 2. and 3. *Ed. 6.* for Tithes is there receiued for so much of it as is not against a generall payment which they would haue had ordaind. But these as the rest in the Volume with them, were only intended for Laws, but neuer had sufficient autoritie or confirmation. The intent was first that those Canon Laws only, which according to the purpose of the two Statutes of *Hen. 8.* and *Ed. 6.* should be compiled, might haue autoritie in the Vniuersities, and force in practice; but so, that there might still be *preseruatio legum nostrarum communium in suo vigore remanentium*, as the words are in the Patent of *Ed. 6.* that authorizes the VII I. persons to consult about them.

For our Laws of Tithing either made or desired, thus much. But before we speak of the *Prælice*, it is requisit that we enter into some disquisition touching Parishes or Parochiall right according wherto at this day from ancient time the payment of Tithes is regularly performed.

CAP. IX.

- I. Of Parishes in the Primitiue Church of the Britons.
- II. Parishes in the Primitiue Church of the English Saxons. first limited only in regard of the Mi-

Ministers function, not of Parochiall profits, all the profits of every whole Diocese, first made a common treasure to be disposed of by the Bishop and his Clergie, of the same Diocese. Residence of the Bishop and Clergie in those times. The great regard then had to every Clergie man.

III. Of division of our Parishes. whether Honorius Archbishop of Canterburie first divided them. Parochia or Paroecia diversly taken.

IV. Lay-foundations of Parish Churches; from whence chiefly came Parochial limits in regard of the profits receivd to the singular use of the Incumbents. Limitation of Tithes by K. Edgar to the Mother Parish Church, or Monasterie. Monasteries preferred before other Churches for buriall. Mortuaries. Dunstons. a third part of Tithes (according to K. Edgars Law) must be given to a new-built Church that had right of Sepulture by the Founder. Sepultura and Baptisterium. Capella Parochialis. a Parish commanded to be made (out of another that was too large) by the Pope, one Parish joind to another by the King.

IN consideration of our Parish Churches and Parochiall limits, the times of the Britons first, then of the English-Saxons and forward are to be thought of, that is, the elder times of their Christianitie.

I. For

the
Bishop
authorities
of the
Church
Church
respecting
antiquity
of Welsh
Church
at least
Bishops

I. For the *Britons*; little or no Testimonie of credit is extant that discovers the Ecclesiasticall policie vsed by them, in their primitive times, or declares the possessions of their Hierarchie. And we omit here wholly what might be collected out of that fabulous tale of *Augustine* preaching at *Cometon* in *Oxfordshire*, whereof more in the next Chapter. Although *K. Lucius* had instituted XXVIII. Bishops, and III. Archbishops (as the *British* storie tells vs) yet, how in those Diocesess any distinct Parishes were, appears not expressly. But we may very well think that such kind of Parishes only were in those Bishopricks as we haue already shewd to haue been in the Primitive Church elsewhere. neither is it likely that in those times, the custom of this Island therein should differ from what was euen vni- formly receiued through those parts of Christen- dom, wherof we haue best testimonie remaining. But if all ancient autoritie were of credit, Parish Churches expressly mentiond of about the time of CCCCXC. and endowd as at this day might be found among the *Britons*. For when *Dubritius* was made Archbishop of *Southwales* which they called *Dextralis Britannia*, and his See appointed at *Landaff* vnder *Mouris* Prince of that *Wales*, diuers Churches with their endowments of Tithes, Oblations, and other profits were appropriated to him and his successors, by the relation of an old Autor. Propter san-

a. *Anonym. Ms. de
primis in Lan-
don. Ecclesia in
Bibl. Cottoniana
eodem in Codice
Lond. qui Tilo
dicitur habetur.
Regens autem
exscriptus Tilo
reperitur in ea-
dem Biblioth.*

“ Civitatem suam (*arabiz words*) & prædicationem præclaram Beati Pastoris & regalem parentelam suam plures Ecclesiæ cum suis dotibus, Decimis, oblationibus, sepulturis, Territorijs & libera communione eorum datæ sunt sibi & successoribus suis omnibus à Regibus & Principibus totius regni Dextralis Britannia. *and then*, Videns autem sanctus Dubritius Largifluam potentum manum erga sibi commissam Ecclesiam, partitus est discipulos mittens quosquam discipulorum suorum per Ecclesias sibi datas, & quasdam fundavit Ecclesias, & Episcopos per dextralem Britanniam coadiutores sibi, ordinatis Parochijs suis, consecrauit. But this Autor wrote not before about the beginning of the last CCCC. yeers from Christ, and spake of these things in the phrase of his own time. the hand and context and their relations in him iustifie it. he talks, you see, of Churches endowd and appropriated and founded, as if he meant no other then such as now are conueiable by Patrons and Ordinaries in the course of appropriations vsed in later ages, and filled with Incumbents that had in them like estates and particular interest in the profits as Parsons at this day. indeed, that in those times Churches were built here, no doubt can be made; neither is it to be conceiud how ^b Christianitie could be in any Nation much ancients (if generally receiud, or by any number) then Churches

b. *1. Ad Cor.
cap. 12. 22.
Sed videbis 17.
de Polysin. lib. 2.
Epist. 126.*

Churches or some convenient Houses or other places in the nature of Churches, appointed for the exercise of deuotion. and expresse mention is of a Church built here in the time of the Romans, to the honor of S. Martin in which Augustin and his followers when they came first from Rome, made their holy assemblies, and others also they repaired. and saies Gildas, of the Clergie of his time, that is about D. LXXX. *Ecclesia domus habentes, sed turpis lucri gratia eas aduertes.* But I ghesse, that vnder Dubriti' few or no parish Churches were otherwise erected then for convenient places for such Ministers as the Bishop out of his Clergie arbitrarily sent thither, and that the offerings & other profits there receiued were to the common treasurie of the Diocese, and to be dispensed as is before declared, where we speak generally of those elder times. & in regard no more certainty of the establishing of the endowments, or places of residence in the British Hierarchie, may be found, I willingly permit to euery man his own coniecture.

I I. For the age of the Saxons; we read that Augustin and his companie, when they first came to K. Ethelbert in Kent, began there to imitate *Apostolicam primitiue Ecclesie vitam, ea tantum que victui necessaria videbantur ab eis quas docebant accipiendo,* and, that after they had conuerted the King, they builded and repaired Churches. *maiores predicandi per omnia, & Ecclesias*

c. Bede Hist. Eccles. lib. 2, cap. 26.

d. Bede lib. 2, cap. 26.

fabricandi vel restaurandi licentiam accipiebant.

e. *Cart. Antiq. 1.*
8. *to area London.*

So *Estelbert* in his Charter of foundation (if you will beleue the autoritie • whence we haue it) of his Abbey in *Canterburie*, talks of *alias quas fabricauit Ecclesias*. And doubtlesse those Churches which they built, or repaired, as also the Temples of the Gentiles which by aduise of Pope *Gregorie* to *Mellitus* were not to be destroyed, but conuerted to Christian seruice, had some kind of limits of adioining Villages or Towns, and so were in that respect Parochiall. But those limits and Churches were variouſly chosen and assigned to ministring Priests, according to the conuenience of the assembling of the Neighbour-inhabitants; but not so ordaind that euery Parishioner was bound to keep his deuotion within the limits of this or that parish church. that is, Parishes were then limited only in regard of the ministring Presbyterie (whence they were called *recupercynean* i. circuits, within which the Priests exercised their shruing) but not in regard of the profits receiud from the Parishioners. For the whole Diocese (first of *Canterbury*, the of the other elder Bishopriques, as they were instituted) was indeed the only limited Parish, in regard of the Parishioners profits. & the Clergie of the Bishop, that is, his familie of Church men, were the Curats in inferior Churches, according as the Bishop appointed and altered them; and whatsoeuer they receiued through deuotion

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devotion of good Christians, made vp a common treasure for the whole Diocese (whence it followd, that it was not materiall at what church any Parishioner offerd his Christian bountie, so he did it within the Diocese) which was both consonant to what is found to be the vse of other Churches in the Primitive times, and is also confirmed by that *Augustin* in his question to Pope *Gregorie*, touching Bishops, he demanded *qualiter cum suis Clericis conuersentur? vel de his quae fidelium oblationibus accedunt Altari, quante debeant fieri portiones?* whereto the Pope answers that the custom is generally to make a quadripartit diuision for the Bishop, for his Clergie, for the Poor, and for reparation of Churches, but he admonishes him, that in the tenderesse of the *Englisch-Saxon* Church, he and his Clergie should still imitate the communitie of all things vsed in the Primitive times vnder the Apostles. The *Saxon* of that question is obseruable. *Aenert be Bysceopum; hu hie mid hisra gefepum dnohtian 7 luxian scyle. Oððe in þam lacum geleafsumpa he hie to peopodum, 7 to godes cyrcum bpengeað, hu monige dælar þara beon scyle,* that is, first concerning Bishops. how they should bear themselves among their Clergie, or how many parts they should haue in the offerings that good Christians brought to Altars and to Gods Churches. here it is more plainly exprest, that whateuer came to any Altar or Church, within the Diocese,

f. Extat in *Beale*
exemplaris *Saxo-*
nici *Ms. lib. 3. in*
Bibl. Cottoniana

Videbitur Bedam
Hist. Eccles. lib. 4.
cap. 27.

John of Salisbury
Epist. ad Henr. II.
lib. 2. cap. 10.

In Synod. Angli.
a. 1. 11. 786.
Canon. 3. cap. 9.

Diocese, was one common profit to be deuided or employed; as Pope *Gregorie* answers; where he tells him also that the Bishop and his Clergie must liue together, *Sed*, saith he, *quia fraternitas tua Monasterij regulis erudita, seorsum viuere non debet a Clericis suis in Ecclesia Anglorum &c.* So that you may collect that in these Primitive times of the *Englisb-Saxon* Church the Bishop and the whole Clergie of the Diocese were as one body liuing vpon their endowments (bestowd on the Bishoprique) and their treasure that came from the sundrie places of deuotion whither som one or other of them at the Bishops appointment, was sent to preach the Word and minister the Sacraments. euery Clerk hauing his diuidend for his maintenance. Neither in these elder times, I think, did any of these of his Clergie or Chaplains vsually reside elsewhere then with him at his Bishoprique (as Deanes and Chapters at this day) or in some Monasteries whence they might as occasion required, at certain times go into those Parishes which were distinguished only for seuerall functions of those Chaplains, lest want of such distinction might the sooner haue caused also a want of speciall discharge of this or that Cure. so that there were *singularum Ecclesiarum Presbyteri* ^b *qui populum erudire debent*, and they were particularly ordaind for the Title of this or that Church, and euery one was bound by our canons of that time

not

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not to leave the Church for which he was so ordained. And from their residence with the Bishop, or out of the Parish in Monasteries, came it, as it seemes, that they were but rarely seen abroad among the people. for so rarely were they seen abroad, that when euer any of them were espied in the Countrey, the people vsed presently to flock about him, and with all reuerence humbly to beseech his Benisons, either by signing them with the Crosse, or in holy prayers for them; and, with all earnestnesse of attention, they heard what he preached. This is that which Bede teaches, when he tells vs, that *si quis Sacerdotum in vicum forte deueniret, mox congregati in unum vicani, verbum vite ab illo expetero curabant.* And againe, *Erat quippe moris eo tempore populis Anglorum, vt, veniente in villam Clerico vel Presbytero, cuncti ad eius imperium verbum audirent, libentius ea, que audire & intelligere poterant, operando sequerentur.* How long this communitie in euery Diocese between the Bishop and his attending Clergie (which is denoted often by the name of *Episcopi Clerus*) continued, fully appears not. But, that it was not out of vse till past more then C. yeers after Augustines comming, that is, till past D.C.C. yeers from Christ, may be coniectured out of those testimonies of Bede, which extend as farre.

III. Yet it is commonly receiued, that Honorius,

* vide cum sup.
Euseb. lib. 9. c. 26.
& lib. 4. c. 27.

Honorius, the first Archbishop of *Canterburie* after *Augustine*, about the yeer D. C. XXX. first diuided his Prouince into Parishes. And in the late historie of the Archbishops of *Canterburie*, written by Mr *Ioscelin*, it is thus deliuered of him. *Neque solam Episcopos tanquam superiores turrium custodes Ecclesie superimpofuit, sed etiam, Prouinciam suam primus in Parochias diuidens, inferiores Ministros ordinauit.* And according to this, haue some of our greatest and most learned Writers related. But I doubt much how it can at all stand with truth. For if *Parochie* be here meant only for such as were assigned Limits for those which were sent arbitrarily from the Bishop, out of the number of his Chaplains, or his *Clerus*, residing for the most part, in those elder times, with him at his Bishopricke; then cleerely, *Honorius* was not the first that made diuision of them. Such kind of *Parochie* are euen neerer as ancient as Bishopricks; and questionlesse, in *Augustines* time. How could otherwise, Gods Service be orderly had in the Infancie of the Church? And when euer seuerall Churches for Christian Service, or other places for holy Assemblies, began, then began such *Parochie*. And that Churches were built here before *Honorius* his time, is before manifested. If, on the other side, *Parochie* be taken for what it's vsually vnderstood, that is, for such Limits as now make Parishes, bounded as well in regard of the profits

receiued from the Parishioners (due only to the Minister of that Church) as of the Incumbents function and residence; how will that stand with the communitie of Ecclesiastique profits; and the Bishops and his Clergies living together, that may be without much difficultie discovered out of *Bede*, to haue continued after *Honorius* also? But where euer that testimonie of his diuiding Parishes was first found, I doubt it was mis-vnderstood, through the various signification of *Parochia*. For in those ancient times, *Parochia* vsually denoted as well a Bishoprique, or Diocese, or byscope reyne, as the Saxons called it, as a lesse Parish. That signification is very obuius in the old Councells of both Tongues (as it is also specially obserued by the learned *Filesacius* in his *Parœcia*) and in the monuments of this Kingdome. For it is related of King *Cenwalch*, that he diuided *! Prouinciam in duas Parochias*, when he made a new Bishoprique at *Winchester*, that was taken out of the Diocese of *Dorchester*. And in the Councell of *Hertford*, held vnder *Theodore* Archbishop of *Canterburie*, one Canon is *x*, *Vt nullus Episcoporum Parochiam alterius inuadat sed contentus sit gubernatione credita sibi plebi*. So in *Florence of Worcester*, vnder the yeere D. C. LXX X. *Merciorum Prouincia in quinque Parochias est diuisa*, that is, into five Bishopriques. And the truth is, that it may be said properly enough, that *Honorius* was the

1 Bede Hist. Eccl. lib. 3. cap. 7.

*k Nidmo lib. 4. c. 3.
Et videtur c. 16.
q. 2. c. 6. sand.*

first vnder whom his Prouince was diuided into
 such *Parochie*, or Bishopriques. that is, No other
 Bishopriques (except *Canterburie*, *London*, and
Rocheſter) were in his Prouince vntill his time,
 thoſe three being almoſt of one antiquitie. But
 vnder him, *Byrinus* was made firſt Biſhop of the
West-Saxons, and had his See or Biſcop ſetle (as
 they calld it) at *Dorcheſter*, and *Fælix* the *Bur-*
gugnone was likewise ordaind firſt Biſhop of the
East-Angles at *Dunwich*. Which two Ordina-
 tions, in regard the like had not been in this
 Prouince of *Canterburie* from *Auguſtines* time
 till this *Honorius*, were perhaps the cauſe why it
 might be related, that *Honorius primus Prouin-*
ciam ſuam in Parochias diuiſit. Which, al-
 though it were to be conceiud of ſuch Pariſhes
 as at this day wee call by that name, yet could
 not extend to all his Prouince. For not till long
 after his time, was Chriſtianitie receiud in the
 Kingdome of *Suffex*, which was firſt conuerted
 by *Wilfrid*, firſt Biſhop of *Œlſey*, in the yeere
 D. C. LXXIX. Hitherto then, for aught can
 out of ancient Moniments be proued, no Limits
 Parochiall, in regard of the profits to be receiud
 from the Pariſhioners, and ſpent by this or that
 Miniſter only, were assigned. But the ancient
 courſe of a kind of communitie of all profits of
 the Dioceſe, with the Biſhop and his Clergie,
 remaind ſtill in vſe. Neither was the intereſt of
 many Churches, it ſeems, as yet here in any Lay-
 founders.

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founders. But the Bishops, as I thinke, had both the interest and gouernance of the Churches built by the King, and rooke care for building new in their owne endowments, and hallowing old ones, that had been either prophaned since Christian Service vsed in them among the Britons, or formerly consecrated only to Heathenisme. So may you vnderstand that of Byrinus, first Bishop of Dorchester. *Factis dedicatisque Ecclesijs multisque ad Dominum, pro eius labore, populis aduocatis, migravit ad Dominum*, as Bedes words are; in the Saxon of which it is exprest, that the Cipucean pophte 7 gehalgode, that is, made Churches, and ballowed them.

Observe y^e

IV. But afterward, when deuotion grew firmer, and most Lay men, of faire estate, desired the Countrey-residence of some Chaplains, that might be alwaies readie for Christian instruction among them, their Families, and adioyning Tenants; Oratories and Churches began to be built by them also: and being hallowed by the Bishops, were endowed with peculiar maintenance from the Founders, for the Incumbents that should there only reside. Which maintenance, with all other Ecclesiastique profits that came to the hands of euery such seuerall Incumbent (in regard, that now the Lay-founder had, according to the Territorie of his Demesnes, Tenancies, or neighbouring Possessions, made and assigned both the Limits within which

the holy Function was to be exercised, and appointed the persons that should repaire to the Church, and offer there, (as also provided a speciall Salarie for the performance) was afterward also restrained from that common Treasurie of the Diocese, and made the only reueneue, which became perpetually annext to the Church of that Clerk who receiued it. Neither was it wonder, that the Bishops should giue way to such restraint. for had they denied that to Lay founders, they had giuen no small cause also of restraining their deuotion. Euery man, questionlesse, would haue been the vnwillinger to haue specially endowd the Church, founded for the holy vse chiefly of him, his Familie, and Tenants, if withall he might not haue had the libertie to haue giuen his Incumbent, there resident, a speciall and seuerall maintenance; which could not haue been, had the former communitie of the Clergies reueneue still remained. Out of these Lay foundations chiefly, doubtlesse came those kind of Parishes, which at this day are in euery Diocese. their differences in quantitie being originally out of the difference of the seuerall Circuits of the Demesnes or Territories possessed by the Founders. And after such time as vpon Lay foundations, Churches had their profits so limited to their Incumbents, no doubt can be, but that the Bishops, in their Prebends, or Ad-uowsons of Parishes, both in Cities and in the Coun-

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Countrie, formerly limited only in regard of the Ministers Function, restrained also the profits of every of their severall Churches, to the Incumbents; that so a vniformitie might be received in that innouation of Parochiall right. At what time these Lay foundations began to be frequent, plainly enough appeares not. But some mention is of them about the yeere D. CCC. as you may see in ^m Bede, where he speaks of one *Pueb*, a Saxon Noble man, that had built a Church, and entreated *Iohn*, Bishop of Hangulstad, to consecrate it; and the like also of one *Addi*. *Alio item tempore*, sayes hee, *vocatus ad dedicandum Ecclesiam Comitum vocabulo Addi*. Some such more, of about that time, may bee found. But about the yeere D. CCC. many Churches, founded by Laymen, are recorded to haue been appropriated to the Abbey of Crowland; as you see in the Charters of Confirmation made by *Bertulph* King of Mercland, and of others, to the same Abbey, reported by *Ingulphus*. Whence it may bee obserued, that by this time Lay foundations were grown verie common, and Parochiall Limits also of the Parishioners deuotions. And in a Councell held in D. CCC. XVI. vnder *Wilfrid*, Archbishop of *Canterburie*, wee find, *Vbi Ecclesie edificentur, & propriae Diocesis Episcopo sanctificentur*. And a Canon of the same Synod ordains, That vpon the death of every Bishop, *Statim per singulas*

m Hist. Bed. lib. 4. c. 5.

Pueb

Addi

n M. (de Bist. Cantuariensi) c. 10.

gulas Parochias in singulis quibusque Ecclesijs, pulsato signo, omnis famulorum Dei catus ad Basilicam conueniat. Ibiue pariter XXX. Psalmos pro defuncti anima decantent, & postea unusquisque antistes & Abbas D. C. Psalterios & CXX. Missas celebrare faciat, & tres homines liberet, & eorum cuiusbet tres solidos distribuat &c. with other Ceremonies of Fasting and Prayer (according to the time) for the soule of the Bishop. Here, it may seem, Parishes limited as at this day, are vnderstood. But the first expresse mention of limitation of profits (other then of the endowing) to bee giuen to this or that Church, is in those Laws of King *Edgar*, made about D. CCCC. LXX. where a three-fold diuision is of Churches. the first is called *Ealdan Wyrte*, that is, *Senior Ecclesia*, which * name anciently was giuen to Cathedrall Churches; the second, a Church that hath *Legenstoepe*, or place for Buriall; the third, a Church that hath no *Legenstoepe*. Where it is ordaind, that every man, hauing not erected a Church of his own, should pay his Tithes to the *Ealdan Wyrte* *De reo hyrnerre to hyrre*; that is, *to the ancientest Church or Monasterie where be bears Gods seruice*. Which I vnderstand not otherwise, then of any Church or Monasterie, whither vsually in respect of his Commorancie or his Parish (determined according to the Farmes, Houses and Lands, occupied with those Houses or Farmes) he repaired,

* *Leg. Franc.*
apud *Willelmum*,
lib. de Parochia.

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pained; that is, his Parish Church or Monasterie.
For we must remember, that in those times, Mo-
nasteries (which somewhat before *Edgar* were
for the most part filled with secular Clerks, who
also, as other Clergie men took pains abroad in
the spirituall Haruest; and vnder him by Arch-
bishop *Dunstan*s procurement were restored on-
ly to Gloister Monks or *Benedictines*) as well as
other Churches erected either by Bishops or
Lay men; were in many places the only Orato-
ries & Auditories that the neer Inhabitants did
their deuotions in, and perhaps were in regard
of buriall most commonly preferred before other
Churches whatsoever. which may be collected
from a Canon of an old Synod of *Ireland* held
about these elder times of the *English Church*.
neither is it likely but that the manners of these
Northern Churches in that age were enough a-
greeable to each other. In that Synod it appears
that any man might haue bequeathed his buriall
to what Abbey best pleased him, and that the
Abbot to whose Monasterie the bequest was
made, should haue the Apparell of the dead, his
Horse and his Cow for a Mortuarie, although
he had before solemnly giuen all that he had to
any other Abbot. whence may easily be conie-
ctured that Monasteries were in chiefest reputa-
tion for a buriall, and had a right of it before a-
ny other kind of Parochiall Church, if the dead
made choise of any of them. and by the way for
that

o Regular. Syn.
verdis Anglica
Hortens Monach.
Sancti inuenerunt
qui Main Bibl.
Cotton. & Mab.
modern. lib. 1. de
syn. P. 100. f. 113.

p In Statut. Synod.
Ms. in sep. lib.
Bibl. cap. 9.

q Videtur a. 10.
quasi. 1. c. 1. p. 10.
Gap. 10. & 11. q. 2.
c. 6. vbi cumque
sed & vide Apo-
stol. ad Cor. 1.
Lect. 1. p. 11. 43.
cap. 4.

*Vide Canon
Legum.*

that course of payment of a motuacie (which the Saxons, I think, call'd *raprocan*) the same Synod affirms, that *Omne corpus sepultum habet in iure suo Vaccam & Equum & Vestimentum & Ornamentum sui Loculi; nec quicquam horum reddetur in alia debita; quia corpori eius tanquam vernacula debentur.* and although the certain age of that Synod appears not, yet it was after such time as Parishes were limited in regard of the Parishioners repairing to one certain Church and giving their deuotions there only, for in it also are these words: *quisunque discesserit de sua Ecclesia & in alia Ecclesia sepultus fuerit &c.* who can *sua Ecclesia* be but such a kind of Parish Church, as at this day is titled for, that is, one limited in regard of the Parishioners and their profits received from them. But, in that of *Edgar's* *Seal* *Omne*, it is plain that although *Omne* specially denote a Monasterie, yet all other Parish Mother Churches are vnderstood by it, and indeed *cypic* and *Omne* are frequent, as Synonomies in the Saxon monuments. But as the first part of his Law that gives all Tithes to the Mother Church of enery Parish, meant in them a Parochiall right to Incumbents, so also the second part, that permits a third portion of the Founders Tithes to be setled in a Church new built, whereto the right of Sepulture is annexed, makes a dispensation for a Parishioner that would build such a Church in his Boelano or land possessed

possessed *optimo iure*, or as inheritance deriued from a Charter of feoffment. And howeuer that second part also of this Law, is iterated by King Knout, yet I doubt not but that such new erections within old Parishes bred also new diuisions which afterward became whole Parishes, and by conniueance of the time, took (for so much as was in the Territorie of that Bocland) the former Parochiall right that the elder and Mother church was possessed of. For, that right of Sepulture or hauing a legacy^{or}, was, and regularly is a Character of a Parish Church or *Ecclesia*, as it is commonly distinguished from *Capella*, and anciently if a *quare impedit* had been brought for a Church, whereas the defendant pretended it to be a Chappell only, the issue was not so much whether it were Church or Chappell, as whether it had *Baptisterium* or *Sepulturam*, or no. so it appears in a case of ²³ Hen. 3. where William of Whitanslon in his count against the Archbishop of Canterburie, expresses, *Ecclesiam de Hey* in *Suffex* to be of his aduowson, and the Archbishop pleads that what he calls a Church, *non est Ecclesia, imo Capella pertinet ad matricem Ecclesiam de Terringes, ita quod non est ibi Baptisterium neque Sepultura imo omnes qui nascuntur ibidem baptizantur apud Terringes, & similiter omnes qui ibi moriuntur, sepeliuntur apud Terringes &c.* and thence was it also that the whole Clergie of England put the inquirie of such an

Trin. Plur.
23. Hen. 3. rot. 15.
in arce Londi-
nensi.

f In Annot. Ms.
Monasterij Bur-
tonensis. sub anno
1137. apud Y. C.
Tho. Allen. Oxon.

e. *Inductio in vi.*
de consensu e. quam-
vis Len natus
verb. una Ecclesia
in vi. de celebr.
Missar. e. effrenata.
& vide Bract. fol.
241. b. & Flet. lib.
3. cap. 14. & Bre-
ton fol. 126. b.
in Tugulpho fol.
489. b.

x *Exm. vi. de Ec-*
clesiasticis. c. 3.
ad ordinacionem.

issue among their gricuances, when in 21 Hen 3. they desired *Orbo* the Popes Legat, among other freedoms, to get for them of the King, *Quod iudices seculares non deciderent causas Ecclesiasticas in foro seculari, nec tales homines determinent vtrum talis Capella debeat habere Baptisterium & Sepulturam an non.* For, if it had the right of administration of Sacraments in it and Sepulture also, then differd it not from a Parish Church, but might be stiled *Capella Parochialis*, by which name some Chappels are with vs known. and in the Saxon times also we find *Cæmiterium* a *Capella*, for the buriall place of a Chappell, which must be vnderstood of a Church that had the like right as that which is mentioend. in the second part of *Edgars* Law. and those other churches which in his and *K. Knouts* Laws are spoken of, that is, Churches without buriall places, *peldcypican*, or *field-Churebes*, are only what at this day we call Chappels of ease, built and consecrated for Oratories, but not diminishing any thing of the Mother Churches profits. But also besides those originall Lay foundations, some Parishes haue had other beginnings since from alterations made in regard of the inconuenience of their former limits. And this by direction or autoritie both from the Pope, or Bishops, according as they saw occasion exacted; and from the King. For the Pope; we may see in the exāple remaining in the Decretals *, where Pope *Alexander*

ander the third sends his Decree to the Archbishop of York, reciting that in a complaint made to him, he had heard that a certain Town in his Prouince was so distant from the Parish church, that it was very difficult for the Inhabitants to repaire thither, especially in winter, and withall that the Church reueneue of the Parish (although that Town were exempted) was not insufficient for the Minister of the Mother Church, wherefore he commands the Archbishop to build in that Town a Church, and with assent of the Founder of the Mother Church, to institut at the Presentation of the Rector an Incumbent there, that might haue to his own vse all Ecclesiastique profits encreasing in the limits of the same Town, and so acknowledge a superioritie to the Mother Church, and that he should do it also whether the Rector of the Mother Church would assent or not. For the King; an old example is in 13. Hen. 3. where because the Church of S. Peeters in Chichester was very poor, & that only two Parishioners were in it, the King at request of Ralf Neuill then Bishop there & Chancellor of England, grants, *quod eadem Ecclesia demoliatur & prædicti duo Parochiani qui spectabant ad ipsam assignentur imperpetuum Hospitali S. Marie, quod eidem Ecclesie est vicinum, ut ibi deinceps percipiant spiritualia & sint Parochiani eiusdem Hospitalis.* And such like commands, occasions, and conueniences, doubtlesse haue al-

y 20. 13. Hen. 3.
part. 1. memb. 7.

terd and made the limits of diuers Parishes eueriewhere, both in the Countrie and Cities, which haue to this day many of small Territorie, but of large number of Communicants. For Parochi-
all limits, thus much.

CAP. X.

I. *The Practice of Tithing. Of K. Cedwalla's Tithing, being no Christian. the custom of the German-Saxons, in sacrificing their tenth captiue to Neptune. Decima used for a lesse part also in ancient moniments.*

II. *The Practice of Tithing in the Christian times of our Ancestors. the tale of Augustin and the Lord of Cometon touching non payment of them. the Tithe of euery dying Bishops substance to be giuen to the poor, by an old Prouincial Synod: Tithes how mentioend in Domesday. Testimonies of payment of them. Henric the thirds grant of the payment of tithe of Hay & Mills out of all his demesnes. The beginning of Parochi-
all payments of Tithes in common and establisshed practice in England. How that common asser-
tion; that euery man might haue disposed his tithes at his pleasure, before the Councell of Lateran, is true and to be vnderstood.*

THE *Laws* of this Kingdom for payment of Tithes, and the originall of Parochi-
all right to profits accruing within the
limits

limits of every Parish Church (which were, after Lay foundations grew common, distinguished according to the adjacent possessions and tenancies of the Founders, and their Farms, Mannors, Towns, and the like) being hitherto declared; the *Practice* of the times remaines to be also discovered.

I. In that, something also is observable among the Ancients of this Kingdom of a kind of Tithing, related to haue been where Christianitie was not yet receiued. Some of them tell vs of *Cedwalla* King of the *West-Saxons*, that before his being made *Christian* (about the yeere D.C. LXXXVI.) he tithed all his spoiles of Warre to the Deitie. So the Monk of *Malmesburie*. *Arduum memoratu est*, saith he, *quantum etiam ante baptismum inserviret pietati, ut omnes manubias, quas iure predatorio in suos vsu transferisset, Deo decimaret.* neither, if he did so, was it without some example of his Ancestors the *German-Saxons* (whence *England* was chiefly filled) who were wont to sacrifice to *Neptune* (I think) the Tenth of all captiues taken in their pyracies and incursions made by Sea vpon the *Gaules* specially. so saies my Autor, that liud about the time of the *German-Saxons* first arrivall here. his words, of them are. *Præterea priusquam de continenti in patriam vela laxantes, hostico mordaces anchoras vado vellant, mos est remeaturia Deminimū quonque captorum per aquales*

a Sidm. Apoll.
p. 116. f. 8. v. 2. a.

& cruciarias pœnas, plus ob hoc tristi quod superstitioso ritu, necare superque collectam turbam perituro-
rum mortis iniquitatem sortis equitate dispergere. Talibus se ligant votis, victimis solvunt: & per huiusmodi non tam sacrificia purgati quam sacrilegia polluti, religiosum putant cœdis infauste perpetratores, de capite captivo magis exigere tormenta quam pretia. Neither, I think, is any other expresse mention of this their Tithing, among ancient monuments. and, for that their sacrificing to Neptune; indeed the Autor *Apollinaris* here mentions him not. but, it being done at Sea and per *aquales* (for so is the true reading, although some there read *equales pœnas*) you may wel coniecture it was to Neptune or to their supposed Deitie of the Sea. and thus the most learned and noble *Monsieur Sauaron* in his notes vpon *Apollinaris*, expresse also makes it a sacrifice to Neptune. and although it be true that among their gods we find none namd, that is denoted to answer to Neptune, yet, that some Deitie of the same nature, that is some great Sea god was in their superstitions, may be easily collected not only from this relation of their cruell deuotions, but also from their wondrous and accurat obseruation of the ebbs and floods (called by them *Ledons* and *Malins*) which were the^b chief Directors of their account of times, as the Sun and Moons motion hath euer been to other Nations. which doubtlesse was no small cause that
the

^b Videbis Ioseph.
Scalig. de Emend.
d. et. Temp. lib. 2.
& lib. 1. de Mirabilibus S. Scriptu-
re D. Augustino
falsò ascriptum
&c.

the Sea was to them reputed a Deitie, as the Sunne and Moone also, before other Creaturers, in the ancient Theologie of the Gentiles. But for that of *Cedwalla*, let it be vpon *Malmesburies* credit, that he tithed his spoyle. *Bede*, who might better haue knowne it then *Malmesburie* could, relates no such thing of him. He sayes only, that when he conquerd the Isle of *Wight*, according to a vow that hee made to the Deitie, hee gaue for the Lords vse, the fourth part of the Isle (that is, CCC. Hides or Plough-lands of M. CC.) and of his Martiall gaines, to *Wilfrid*, Archbishop of *Torke*, then being in those parts in banishment, and Bishop of *Seseley*. And *Fridegod*, that in the *Saxon* times wrote the life of *Wilfrid* in Verse, sayes hereof only by Apostrophe to *Cedwalla*,

and the same is
the same is the same
the same is the same
the same is the same
the same is the same
the same is the same

c. M. in Biblioth.
Cotton. de quo
apud Malmesbur.
lib. 1. de S. Pen.
sis, fol. 124. a.

Tu quoque Pontificem multa cellare beasti,
and mentions no more in particular. That which in the Latin *Bede*, in this storie, is called *Familia*, is byo in the *Saxon*. And perhaps only such a kind of giuing a fourth, or any part, vpon vow to the Lord, was in that passage of *Malmesburie* vnderstood for Tithing. Why might it not, as well as the foure Thraues of Corne of euerie Plough-land, in the East-riding of *Torke*, giuen by King *Asbelstan* to the Church of *S. Iohn* of *Beverley* (which came, on the other side, not neer to the Tenth) are stiled *Decime* in a Bull of one of the Pope *Gregories* (I thinke the ninth) which

which I haue seene transcribed. As if *Decima* in one notion had signified any kind of reuennue, deuoutly offered to holy vses, as, vpon other reason, *denotes* also *denotes* among the *Greeks*. Those foure Thraues of euery Ploughland were, before that Grant, payable into the Kings Auenarie^d by custome of the Countrey. And in *Arbelslans* Charter (as I^e found it transcribed) they were thus exprest,

d Fulcardus Doro-
bornens. de vita &
mirac. I. de Bener-
laco rectam Ms. in
Biblioth. Cotton.
e Ms. in eadem
Biblioth.

Da þonne ðraue by heuen cýng
Of ilc a plou of Ertnebing.

And for that more generall notion of *Decima* or *Decimatio*, I haue seen the transcript of a Deed made^t by *Robert de Hesel* to the Monasterie of *Giseburne* in *Torkeshire*, wherein hee giues *duas garbas de tota terra quam de nouo colui in Territorio de Hesel postquam illam tenui aut quam ego de cetero colam vel heredes mei; ita vt Decimatio hæc cedat in fabricationem Ecclesiæ noue de Giseburne*. Here the gift of two Sheaves is called *Decimatio*.

f Chartula. Ms.
Monasterii de Gise-
burne in dict. bib.

II. For the practice of payment among Christians; both *Britons* and *Saxons*; might wee beleeue the common tale of that *Augustine*, the first Archbishop of *Canterburie* Prouince, his comming to *Cometun* in *Oxfordshire*, and doing a most strange miracle there; touching the establishing of the Doctrine of due payment of Tithes, wee should haue as certain and expresse

noide

auto-

authoritie for the ancient practice of such payment, as any other Church in Christendome can produce. But as the tale is, you shall have it, and then censure it. About the yeer (they say) D C. *Augustine* comming to preach at *Cometon*, the Priest of the place makes complaint to him, that the Lord of the Mannor having been often admonished by him, would yet pay him no Tithes. *Augustine* questioning the Lord about that default in deuotion; hee stoutly answered, That the tenth Sheaf doubtlesse was his that had interest in the nine, and therefore would pay none. Presently *Augustine* denounces him excommunicat, and turning to the Altar to say Masse, publicquely forbad, that any excommunicat person should be present at it, when suddenly, a dead Corps, that had been buried at the Church doore, arose (pardon me for relating it) and departed out of the limits of the Church-yard, standing still without, while the Masse continued. Which ended, *Augustine* comes to this liuing-dead, and charges him in the name of the Lord God to declare who hee was. Hee tells him, that in the time of the *British* State he was *huius ville Patronus*, and although he had been often vrged by the Doctrine of the Priest to pay his Tithes, yet he neuer could be brought to it; for which he died, he sayes, excommunicat, and was carried to Hell. *Augustine* desired to know where the Priest that excommunicated him, was

buried. this dead shewed him the place; where hee makes an invocation of the dead Priest, and bids him arise also, because they wanted his help. The Priest rises. *Augustine* asks him, if he knew that other that was risen. he tells him, yes; but wishes he had neuer known him. for (saith hee) he was in all things euer aduerse to the Church, a detainer of his Tithes, and a great sinner to his death, and therefore I excommunicated him. But *Augustine* publicquely declares, that it was fit mercie should be vsed towards him, and that he had sufferd long in Hell for his offence (you must suppose, I thinke, the Autor meant Purgatorie) wherefore hee giues him absolution, and sends him to his graue, where hee fell againe into dust and ashes. Hee gone, the Priest new risen, tells, that his Corps had lien there aboute C. LXX. years; and *Augustine* would gladly haue had him continue vpon earth againe, for instruction of Soules, but could not thereto entreat him. So he also returns to his former lodging. The Lord of the Town standing by all this while, and trembling, was now demanded if hee would pay his Tithes; but he presently fell down at *Augustines* feet, weeping and confessing his offence; and receiuing pardon, became all his life time a follower of *Augustines*. Had this Legend truth in it, who could doubt, but that payment of Tithes was in practice in the Infancie of the *British* Church? The Priest that rose here from the dead,

dead, liud (if he euer liud) about CCC. XXX. after Christ, and would not surely haue so taxed the Lord of this Mannor only, if the payment had not been vsually among other good Christians here, not taught only, but performed also. Neither need I admonish much of the autoritie of it. the whole course of it directs you how to smell out the originall. Beside the common Legend of our Saints, it is in some Volumes put alone, for a most obseruable Monument. and I found it bound vp at the end of the Ms. life of *Thomas Becket*, Archbishop of *Canterburie*, written by *Iohn de Grandisono*. and it remains in the publique Librarie of *Oxford*. There also you haue it related in *Ioannes Anglicus* & his *Historia Aurea*, and, in the Margine, are noted to it these words: *Hoc miraculum videbitur illis incredible qui credunt aliquid Deo esse impossibile. sed nulli dubium est quod nunquam Anglorum duræ ceruices Christi iugo se submisissent nisi per magna miracula sibi diuinitus ostensa.* But let the truth be as it will, I doe not beleeeue, that the fable can be found, nor any steps of it, aboue CCC. yeer old at most. But, to leaue such testimonie, no doubt can be, but that some practice of payment was here vsed very anciently, which (beside the deuotion to be supposed in Christians, and the Doctrine of ancient Fathers, which, verie likely, wrought here as in other W/estern Churches) might be collected, by good probabilitie,

h. In Bibl. Cant.

i. Eccl. Hist. lib.
4. cap. 29.k. Ms. in Biblioth.
Cant. & apud
V. C. Th. Allen.
Oxon.

out of those Laws alone of the Saxon times which questionlesse were not without some effect, being so often renewd. Neither is the memorie of some vse of payment here, in these more elder times, omitted in the reliques of antiquitie. In the Ms. life^h of the British Saint Cadoc, among some Laws of his Church of Lbancaruan, which seem to be attributed to his time (which falls about our Augustine or before) one is, *Quicumque decimauerit, debet diuidere in tres partes. primam dabit Confessori, secundam Altari, tertiam orantibus pro eo.* but the Autor of this whence we haue it, wrote not till after the Norman Conquest. And it is reported also of Eadbert Bishop of Lindisfarn or Holy Island, that he was *Eleemosynarum operatione* (as Bede's words are) *insignita ut iuxta legem omnibus annis Decimam non solum quadrupedum, verum etiam frugum omnium & pomorum necnon & vestimentorum partem pauperibus daret.* which words are almost repeated also by Turgot Prior of Durham, that wrote the storie of that Bishopricke. But here no custom of the place or common vse is noted, but only a speciall deuotion of Eadbert. and for that of *iuxta legem*; you must vnderstand it of Moses Law. and so is it exprest in the Saxon Copie of Bede, where I read that he did it after Moyses, and that is, according to the Law of Moses. Neither is the regard in those times had to a tenth (although not yearly) to be

to be paid as for a soules ransom, to the poor,
after the death of euery Bishop out of his estate,
to be here wholly neglected. Out of this regard
may be inferd that therein also the Tenth was
reputed as a sanctified parr. And wee learne

it out of a Councell held in D C C C.

“ XVI. In loco famoso (as the words of it are)

“ qui dicitur *Celichyth*, Præsidente verò Wl-

“ fredo Archiepiscopo cæterisque adsedenti-

“ bus australibus Anglorum Episcopis, *whub*

“ *harb this Canon*. Iubemus, & hoc firmiter

“ statuimus ad seruandum, tam in nostris die-

“ bus quamque etiam futuris temporibus, om-

“ nibus successoribus nostris qui post nos illis

“ sedibus ordinentur quibus nos ordinati su-

“ mus, vt quandocunq; aliquis ex numero Epi-

“ scoporum migrauerit de seculo, tunc pro ani-

“ ma illius præcipimus ex substantia vniuscuius-

“ que rei Decimam partem diuidere ac distri-

“ buere pauperibus in eleēmosynam siue in pe-

“ coribus & armentis seu de Ouibus & Porcis

“ vel etiam in Cellarijs, necnon omnem homi-

“ nem Anglicum liberare qui in diebus suis sit

“ seruituti subiectus, vt per illud sui proprij la-

“ boris fructum retributionis percipere merea-

“ tur & indulgentiam peccatorum. And for

the succeeding times of the Saxons; we may well

coniecture a practice of payment out of King

Knonts Epistle sent in M. XXXI. as he depar-

ted homeward from *Rome*, by *Liung* Abbot of

1 Ms. (comp. B.
inter Monumenta
Eccles. London.
in Biblioth. Cass.)
sep 10.

Tanystok to Aibelnoth and Alfrique, the two Archbishops by name, and to the rest of the Bishops & Baronage of *England*. he therein straitly charges them all, that according to the ancient Law they should take care that Tithes were duly paid among other Church revenues, wherein if he found default at his coming they should expect severe punishment. the words were:

in Apud G. Mal.
monasterio de Goff.
Reg. Angl. lib. 2.
cap. 11.

“ Nunc igitur obtestor omnes Episcopos me-
“ os & regni mei prepositos per fidem quam mi-
“ hi debetis & Deo, quatenus faciatis ut ante-
“ quam in Angliam veniam, omnium debita, quæ
“ secundum legem antiquam debemus, sint per-
“ soluta, scilicet eleemosyna pro aratris, & De-
“ cimæ animalium ipso anno procreatorum, &
“ Denarij quos Romam ad sanctum Petrum de-
“ betis, siue ex urbibus siue ex villis, & mediante
“ Augusto Decimæ frugum, & in festiuitate S.
“ Martini primitiæ seminum ad Ecclesiam sub
“ cuius Parochia quisq; degit quæ Anglice *Cure-*
“ *scet* nominatur. Hæc & alia, si cum venero,
“ non erunt persoluta, regia exactione secundum
“ leges in quem culpa cadit districtè absq; venia
“ comparabit. and the Monk that relates it,
addes, *nec dicto deterius fuit factum*. But what e-
uer may be out of these testimonies concluded,
it is noted among the Laws attributed to *Ed-*
ward the Confessor, that what through the cold-
ness of deuotion, what through the neglect of
demanding Tithes by the Clergie, that were o-
therwise

in Forlan Com-
pensatio,

therwise grown very rich in reall endowments, the practice of paiment of them was much diminished. *Sed postea instinctu diaboli* (are the words which follow immediatly what is before in the Chapter of Laws p. XIII.) *multi Decimam detinuerunt, & Sacerdotes locupletes negligentes non curabant inire laborem ad perquirendas eas, eo quod sufficienter habebant sue necessaria vite.* Multis enim in locis modo sunt tres vel quatuor Ecclesie ubi tunc temporis vna tantum erat, & sic ceperunt minui: but we are not sure that this addition to the Law is as ancient as the Confessor. I think it indeed rather of somewhat later time. yet doubtlesse the generall practice of paiment according to those ancient Laws, howeuer it might be in elder times, was about the Norman Conquest, much discontinued, which may be specially obserued out of that book of *Domesday* (the originall Copie whereof yet remains in the Receipt of the Exchequer) in which the Possessions and Reuenues both of the Clergie and Laitie were accounted and valued, by the othes of Enquests taken in euery Countie vpon commission, and so returned thither about the end of the Conquerors raig. There, frequently enough, Churches are mentioned by the words of *Ibi Ecclesia & Presbyter*, or such like; and how many Carues or Hides of land, how many villans, and other endowments and reuenues belongs to them, are reckond, with their values. But

But very rarely any Tithes among those Church reuenues are there found. if none at all had been namd, it might haue been thought that they had been omitted as a more sacred profit, then was fit to be taxed in such a Description. But some, although very few, occurre in it. as vnder *Terra Osberni Episcopi* in *Boseham* in *Suffex*, you may there find that *Decimam Ecclesie Clerici tenent, & valet XL^s*. where the lest value of the Manor is made at *XL^{li}. per annum.* in *Hampshire* vnder *Terra Osberni Episcopi*, you read *Ecclesia S. Michaelis de Monte tenet de Rege in Basingestoches Hundred, vnam Ecclesiam cum 1. bida & Decimam de Manerio Basingestoches. Ibi est Presbyter.* So in the same Shire vnder *Terra Regis*; *Ipse Rex tenet Wallope &c. ibi Ecclesia; cui pertinent vna bida & medietas Decime Manerij & totum* ° *Curslet, & de Decima villanorum XLVI. denary & medietas agrorum. Ibi est ad-buc Ecclesiola ad quam pertinent VIII. acra de Decima.* for these VIII. acres of Tithes, see before in the Chapter of Laws p. IX. X. and XI. And in the same Shire also among the Abbot of *Lire's* possessions, the Tithe of *Cladford* is reckond, as also of *Adrintone*. and also the Tithes of *Stambam* are possessed there by one *Richerius* Parson of the Church of *Stambam*. and vnder *Terra Canonorum de Tuinham*, is found, *Ad hanc Ecclesiam pertinet tota decima de Twinham, & tertia pars Decimarum de Holchest.* and

° 2. Church Sect.

in the Isle of *Wight* there, VI. Churches, belonging to the Abbey of *Lire*, *Decimas habent de omnibus redditibus Regis*. So in *Bedfordshire* the Church of *S. Marie de Cormeljs*, hath diuers Tithes among its reuenues. But the mention of Tithes where Churches are neuertheless spoken of, is but very seldome through that whole Description. and indeed in certain Counties as *Somerset*, *Deuon*, *Cornwall*, and some few others, you shal rarely haue a Parish Church noted, but in others, very often Churches are, but very few examples of their hauing Tithes. sometimes also grants of Tithes by Lay owners are there mentioned, out of the vse of which it may be well thought that the moities or third parts of tithes belonging to this or that Church, had their beginnings. But thereof more particularly in the next Chapter, where we speak of arbitrarie Consecrations. And in most Appropriations of Parish Churches made in the *Saxon* times (the ancient course being to grant, in appropriating, *Ecclesiam cum Decimis*) no mention is of *Decima*, but other possessions of the churches granted are most particularly inserted in the instruments; of which some examples are published in *Ingulphus* Abbot of *Crowland*, and very many occur in Chartularies of old Monasteries. But see also for this matter the authorities anon brought to another purpose in the XIV. Chap. §. 2. For the following age (besides some examples related in

p. Ante alia
Vet. monumenta
confulas si placet
Cartul. Rossensis
Ecclesie, ibid.

the next Chapter, out of which some kind of known payment at least, to some Churches, may be without difficultie collected) that wee may here omit also the diuers Appropriations, in the 7 times presently ensuing the Conquest, of *Ecclesie cum Decimis*, which denotes either some payment or interest of Tithes settled by Consecrations in them; In the life of *S. Cuthbert* Bishop of *Lindisfarn* written by some Monk vnder *Hen. I.* it is related, that in that Autors time a great penurie of food being in *Lindisfarn* (that is, in *Holy Iland*) the Sea left vpon the shore *LXV.* fishes, wherof euery one was a sufficient draught for a yoke of Oxen; and that a Monk came to the Lord of the adioining soile, and desired the Tenth of that abundance so sent by the hand of God. *Saltem Decimas* (as the words are) *quod Legis & Prouincie consuetudo exigebat, Ecclesia requisivit, sed omnibus negatis rubore simul & dolore confusus discessit.* here the practice of payment is noted by *Prouincie consuetudo.* and about the same time the fashion about *Abingdon* was to pay the Tithes to the Abbey (due either as it was an calden Minstre by *K. Edgars* Law; or as they had been consecrated; whereof more in the next Chapter) by whole Hides and Acres. *His diebus*, saies the Chartularie of that Abbey, *raro à quoquam Decima messium vt lege precipitur in Abbatia ipsa dabatur, sed aut de Hidagio XL. manipuli quos vulgò garbas vocant, aut Decima sue*

sua cultura Acra porrigebantur. and for the time vnder Henrie the second; an Epistle sent from Rome by Pope Alexander the third, to the Bishops of Worcester and Winchester, recites the generall institution (which may be vnderstood for custom) of the Church of England to be that euery Parishioner should pay his Tithes corne to his own Parish. *Cum homines* (so it speaks) *de Hortuna secundum generalem Ecclesie Anglicane institutionem, de frugibus suis nouem partibus sibi retentis Decimas Ecclesie cuius parochiani sunt sine diminutione soluereteneantur &c.* wherewith agrees the preamble of his Decretall, remaining yet in the body of the Canon^r Law, there he begins with *Quod cum Parochiani vestri* (that is all the Parishioners within the Diocese of Canturburie) *Decimas bonorum suorum consueuerint Ecclesijs, quibus debentur, cum integritate persolvere; nunc tam laudabili consuetudine pretermissa quidam ex eis de lana & de feno, & de prouentibus molendinorum & piscariarum Decimas ipsis Ecclesijs subtrahere non verentur.* hereto adde that of one of his predecessors (Hadrian the fourth to the Archbishop of Canturburie, where a Parochiall payment of Tithes seems to be spoken of as of known right. and in a composition made by the Abbot of Evesham a Iudge Delegat from Pope Honorius in M. C C. X X. it is taken cleer that certain Tithes *de iure communi pertinent ad Ecclesiam de Leonminstre eo quod*

q In Append ad
Concil. Later.
part. 4. cap. 4.

r Extr. tit. de De-
cimis c. 5. permiss.

r Ibid. c. 4. con-
missum est.

r In Repet. Mon.
Leonminst. suo
Rading in Bibl.
Cotton. & vide
App. ad Concil.
Lat. part. 4. cap. 2.

sit & sunt infra limites Parochie Ecclesie de Leon-
minstre, according as the Texts of the Canon
 Law of about that time expressly also affirme.
 The composition was between some of the Di-
 ocese of *Hereford*, and the Abbot of *Wigmore*.
 like admissions of that Law are in other instru-
 ments, in the Leger book of *Reading*, for the
 Church of *Lemster*. But conclude not out of
 them for practice, without obseruation of the ex-
 amples of the next Chapter. And it appears that
 in 11. *Hen. 3.* a speciall grant was made by the
 King, that Tithes of Hay and Mills should be
 paid from thenceforth in all his demesnes lands
 (that is al occupied either by his Villains or Bai-
 lifes, or by Lessees that came in after the grant)
 which before then had not bin paid. *Domin' Rex*,
 saies the record, *de Concilio Archiepiscoporum*
& Episcoporum suorum concessit vt Decime seni
& molendinorum de singulis Dominicis suis in re-
gno suo de cetero presentur. Et mandatum est bal-
linis de Corsham quod de Dominico suo de Cor-
sham Decimas seni Ecclesie de Corsham dari fa-
ciant. T. R. apud Westmonast. XVIII. die Maij.
 and according to this, were diuers close Writs
 sent out in the following yeeres. Of the times
 afterward, wee find more certain testimonies
 shewing the common right of Tithes and that
 Parochiall; as the Writ of *Indeauer*, grounded
 vpon the Statut of *Circumspecte agatis*, made in
 13. *Ed. 1.* discovers, that in and before that time
 the

n Ros Claus. 11.
 Hen. 3. part. 1.
 membr. 9 in Dors.
 & Ros Claus. 12.
 Hen. 3. membr. 7.
 in Dors. & Claus.
 17. Hen. 3. Dors. 16.
 & Dors. Claus. 20.
 Hen. 3. membr. 24.
 & Claus. 21. Hen. 3.
 membr. 30.

u. Vide *Rat. Fin.*
4. Hen. 3. membr. 10.
de Caus. 5. Hen. 3.
membr. 6.

in the Countie, although the words might import as much, as if the Bishop had receiued them all. It was doubtlesse for the Tithe of the Stannaries only. For it is true, that the Bishop of *Excester* had the Tithe of the profits or rent of the Stannaries there anciently giuen and paid him. and thereof testimonie enough * is vpon record. and to that purpose also is that Marginall Note, in the Book of those Parlements, *Stagmen Cornubie*. cleerely, that goes for the *Stannum Cornubie*, as *Stagminatores* for those of the Works. For the time of *Edward* the third and *Richard* the second (beside that of the Tithes of *Silua cedua*, or Copis Wood, whereof enough before, in the Laws that belong to it) you may remember those complaints of *Chaucer's* Plowman against the Clergie of his age.

Their Tithing and their Offering both
They clemeth it by possession,
Thereof nil they none forgo,
But robben men by ransome.

And then, of Parish-Rectors.

For the Tithing of a Ducke,
*Or an Apple, or an * Aye,*
They make men sweare vpon a Boke,
Thus they foulen Christ say.

And

And,

*He woll haue Tubing and Offering,
Maugre whosoeuer it gruteb.*

And in the Freres Tale,

And small Tubers they were foule ysbent

before the Archdeacon. To these (for Personall Tithes) you may adde that of Mortuaries, payable in Beasts regularly before the Statute of 21. Hen. 8. which were reputed due vpon the generall presumption of euery Defuncts negligence in payment of his Personall Tithes. The Mortuarie was therefore (by the Canons) to bee presented with the body at the Buriall, as a satisfaction of omission, and negligence in paying to the Church * those Personall Duties. And thence was it stiled *Corse-present*; according whereto, I haue seen a Iustification in the Eire of *Derby* of 4. Ed. 3. to an Action of Trespas brought by *Thomas of Goussill* against the Parson of *Whitwell*, for the taking of a Horse; in which the defendant pleades, that it was the Horse of one *I. Leyer* his Parishioner that died, *Et que le dit Chiuall ensemblement oue autres choses fust mesmes & present al Esglise come en nosme de Mortuarie deuant le corps mesme le iour &c.* & il come Parson les prist & resceut auxi come custome de la terre & de Seint Esglise est &c. These shew plainly the receiued and acknowledged

a *Lindbergh de
consuetudine, c.
parsonum, lit. f. de
21. Hen. 3. cap. 6.*

ged Parochiall right, in the practice of those times, which hath to this day continued. neither is it at all necessarie to adde more for the vni-forme continuance of it. Sauing only, that where any Statute hath made a discharge, or Prescription or Custome hath settled a *Modus Decimandi* or certain quantitie payable, though neuer so little, for the Tithe, there, by the Laws of the Kingdome, the owner is not bound to pay other Tithe, then the Statute or Custome or Prescription binds him to. Which yet must be so vnderstood in the case of Lay men, that Custome or Prescription founded in their possessions as Lay, cannot wholly discharge the Tithe, or be *de non Decimando*, but may well be *de modo* only; otherwise is it in the case of spiritual persons, that may by the common Law be by Prescription wholly, discharged and prescribe *de non Decimando*. And this is regularly cleer Law. But at what time this Parochiall and common right became first settled with vs in practice, is not so cleerly known. and though those Decretals, before cited, suppose it a thing of custom here in *Henry* the II. his time, yet if credit might be giuen to the report of those *English* Monks, which (as wee haue before related) referd the ordaining of Parochiall right in Tithes to the Generall Councell of *Lions*, held vnder *Gregoris* the tenth, then wee might conclude the right of it no aneienter then about the beginning of our *Edward* the first. But what-
euer

ever they meant, it is certaine, that some, both Synodall and secular Lawes of this Kingdome, had, before that time, ordained this right. Yet indeed it will be found, that the Practice of it here (as also in other Countries) was not settled till some M. C. years after Christ, or, at least, was, for many years before, & some after, discontinued. Which may partly be collected out of that Decretall of Pope Innocent the third, sent into this Kingdome, and dated in the Lateran; which is before at large in the Chapter of Laws, §. XXIII. For howeuer the recitals are in those of Alexander the third (the one speaking of *Generalis institutio* for Parochiall payment, which, as it may denote common custome, so also may be vnderstood for some Law of the Kingdome, as that of Edgars, Knouts, the Confessors, or some other before related; the other, of *Consuetudine Ecclesijs quibus debentur*, which doth not of necessitie include a generall practice of Parochiall payment, but may as well denote the dutie that comes from arbitrarie Consecrations; of which, in the next Chapter) it is most certain, that before about the yeer M. CC. after Christ, that is, about the time of King Iohn, it was most commonly practised by the Laitie, to make arbitrarie Consecrations of the Tithes of their possessions to what Monasterie or Church they would, sometimes giuing halfe, sometimes a third part, and at their pleasure all, in perpetuall right,

right, or otherwise; according to the nature of those Consecrations in other Countries; of which, enough is before related. Neither doth expresse testimonie hereof want in that Decretall of *Innocent* the third, made against these kind of arbitrarie Consecrations. *Multi* (saith hee) in *Diocesi tua* (that is the Prouince of *Canterburie*) *Decimas suas pro sua distribuunt voluntate*. Neither may you vnderstand it, as if it had bin done by the warward opposition of some only against the receiued and allowd Laws of the Kingdome. For notwithstanding all those Ordinances, both Secular and Synodall, anciently here made for due payment, it is cleer, that in the time before about that *Innocent*; it was not only vsuall, in fact, for Lay men to conuey the right of their Tithes, as Rents charge, or the like, to what Church or Monasterie they made choice of, but by the course and practice of the Law also of that time (both Common and Canon, as it was here in vse) such conueyances were cleerly good; and what was through them so acquired, was continually, and is to this day (except some particulars, which either the Popes autoritie of later time, or new Compositions or Grants, or the like, haue altered) enioyed by the Churches, that yet remaining, had portions so anciently given them, or by the King or his Grantees of appropriated Tithes, very many of which, had their chiefe originall from those arbitrarie Consecra-

tions

Chap. 10.

tions (which you may well call Appropriations of Tithes) and not from the appropriating only of Parish Churches, as some out of grosse ignorance, with too much confidence, deliver. But thereof you may see more in the examples of the next Chapter, where, for most apparant proofe of the practice of arbitrarie Consecrations in those times, Moniments enough are collected. This arbitrarie disposition, vsed by the Laity as well *de iure* (as the Positive Law, then receiued and practiced, was) as *de facto*, is that which Wicclef rememberd in his complaint to the King and Parliament vnder Richard the second. His words are: *A Lord God, where is this reason, to constrain the poor people to find a worldly Priest, sometime vnable both of life and running, in pompe and pride, couetise and enuie, glottanie, drunkennesse and lecherie, in simonie and heresie, with fat Horse, and iolly and gay Saddles and Bridles, ringing by the way, and himselfe in costly Clothes and Relure, and to suffer their wiues and children, and their poor neighbours, perishe for hunger, thirst, and cold, and other mischiefes of the world. A Lord Iesu Christ, sub within few yeeres, men payed their Tithes and Offerings at their own will free to good men, and able to great worship of God, to profit and fairenesse of holy Church fighting in earth. Where it were lawfull and needfull, that a worldly Priest should destroy this holy and approued custome, constraining men to leaue this*

b. Why is this reason, or is this reason.

c. Why is it lawfull.

this freedom, turning Tithes and Offerings into
 wicked vses. But what hee calls a few yeers, will
 fall out to be about C C. for hee wrote about
 the yeer M. C C C. X C. With him well agrees
 some passages in our Yeere-bookes of the times
 before him. As in 7. Ed. 3. fol. 5. a. Parning truly
 affirms, that in *auncien temps deuant vn Consti-
 tution de nouelle fait per le Pape, vn Patron d'un
 Esglise puit granter Dismes, deins mesme le Pa-
 roche a vn autre Paroche.* And Herle there in his
 answer seemes to admit it cleere. So also (tou-
 ching others as well as Patrons) Lodlow, Iudge
 of Assise in 44. Ed. 3. fol. 5. b. *En auncien temps
 chescun bome parrois graunter les Dismes de sa
 terre a quel Esglise il vouldroit. Quod verum est,*
 sayes Iudge Brooke, in abridging the case. But
 what new Constitution of the Pope is meant
 there by Parning? some later * Books tells vs,
 that from the Councell of Lateran the first al-
 teration of that course of arbitrarie disposition
 came. But plainly, no Councell of Lateran
 hath any Canon that altered the Law in it, ex-
 cept that vnder Alexander the third, before
 spoken of in the end of the sixt Chapter, may
 haue place here: which, indeed, the Canonists
 will not endure, vnlesse you restraîne it only to
 ancient Feudall Tithes. And they suppose, eu-
 rie man might haue arbitrarily conueyed, be-
 fore that Councell, his Feudall Tithes to what
 Church he would. And so expressly sayes our
 * Lind.

d Vide 10. Hen. 7.
 fo. 13. a. 7. Ed. 6.
 Dyer fol. 84. b. &
 Coke Reports 2.
 fol. 44. b.

• *Lindwood. Ante illud Concilium bene potuerunt Laici Decimas in feudum retinere & eas alteri Ecclesie vel Monasterio dare; non tamen post tempus dicti Concilij.* But if those which with vs talk here of the Councell of *Lateran*, meane that vnder *Alexynder* the third, and apply it generally to arbitrarie Consecrations of new Tithes, not feudall, I doubt they are much neerer the true meaning of that Councell then any of the Canonists. especially while they speake of this Kingdome. for arbitrarie Consecrations before about the time of that Councell are found here infinite, as presently shall be shewd. But of ancient feudall Tithes (howeuer they were common in other States) scarce any mention at all or tast is with vs. but thereof more in the XIII. Chapter. And, it may be, that when, from the Canonists, some of our Lawiers had learned that feudall Tithes might haue been conueied before that Councell arbitrarily by the owner; and saw withall that scarce any signe was of feudall Tithes in this Kingdom, yet an abundance of old arbitrarie Consecrations, the vse whereof ceased about the time of the Councell; in the words of it no regard or mention being had of feudall but only Tithes in generall; they concluded (who sees enough why they might not?) that before that Councell euery man might haue arbitrarily disposed of his tithes. that is such tithes as were not formerly settled by any ciuill Title.

f. *Quamvis*
supra cap. 3. §. 3.

But if this will not be allowed for the Law of change of those arbitrarie conueiances, why may it not first be that *Parning* by his *Constitution de nouvelle fait per le Pape*, meant that f. of Pope *Innocent* the third, sent to the Archbishop of *Canterburie* in King *Iohns* time (and perhaps it was soon after receiud into the Prouince of *Tork* either by imitation or through the power Legation, which the Archbishop of *Canterburie* commonly exercised through the whole Kingdome) to command a Parochiall payment? For also by the name of a Constitution newly made by the Pope, some such thing rather then a Canon of a generall Councell, is perhaps denoted. And then why might it not happen that the Decretal of *Innocent* the third, bearing date in the Church of *Lateran* should be thence denominated, and that afterward those which truly vnderstanding it, called it therefore a *Lateran* Constitution, gaue cause of mistaking to others that took it for a Constitution of a generall Councell of *Lateran*? especially too because it was about the time of the generall Councell of *Lateran* (held vnder the same Pope that sent it) of which more notice hath been taken in our Law then of any other of that name. and indeed he that affirms that before the Councell of *Lateran* Lay owners might haue disposed their Tithes, *cuiusque Ecclesie secundum meliorem deuotionem*, as *Dyers* words are, speaks true enough, if his words may receiue this

this easie interpretation: that is, that till about that Councell of *Lateran* they might haue done so; not that the Councell vnder Pope *Innocent* restrained it, but that either the next Councell of *Lateran* before, that is vnder *Alexand.* the III. or the Pope by a Constitution, receiued here from *Rome* and dated in the Church of *Lateran*, about the time of that Councell of the yeer M. CC. XV. ordaind the contrarie. so that in this last way the name of the Councell may be a note only of the time about which it was restrained, not of the authoritie whence it was forbidden. Perhaps those Canons of Pluralities, of Exemptions, of the three orders, and some such more which we receiued from that Councell vnder *Innocent*, were brought into *England* at once with this Decretall Epistle; and if so, then also it was no more strange to haue the Decretall afterward tyled by the name of a Constitution of the *Lateran* Councell, then it happend in the denomination of the Statuts of *Aide de Roy* and *Voucher*, made in 4. *Ed. 1.* euery of which are stiled by the name of *Statutum de Bigamis*. yet only one Law *de Bigamis* receiued out of the generall Councell of *Li-*
ons, is among those Statuts; and that is euen as much a stranger to the rest of the Constitutions bearing the same name with it, as Pope *Inno-*
cent's Decretall was to the whole Councell of *Lateran*. However, it is most cleer (let forward ignorance as it can continue to oppose the asser-

tion)

tion) that for C. C. yeers at least before about the time of the Councell of *Lateran*, held vnder the same Pope, arbitrarie Consecrations of Tithes with vs were frequent, and practiced aswell of positive right (If wee may take that for right, in things subiect to human disposition, which generall consent of the state allowd; as no man that knows what makes a positive right, can denie) as of fact; which because they are best conceiud of by the particular testimonies and precedents of them, in the following Chapter manie shall be transcribed; that are all (except one or two in the Prouince of *York*; neither is it likely that in euery place here, and by euery man the intent of that Constitution was suddenly obserued, and perhaps also it was not so soon altered in *York* Prouince as in this of *Canterbury*, in regard that the Decretall was sent only to *Canterburie* Prouince) of the time before that Decretall and taken out of the most choice and authentique monuments, that may afford help to the disquisition of this point so little, so not at all vulgarly or indeed any where publicly discovered.

CAP. XI.

L. Arbitrarie Consecrations of Tithes (before about the time of the most known Councell of *Lateran*) by conuenance from the owner of all or part to any Church or Monasterie at his pleasure,

sure, in examples selected out of monuments of in-
fallible credit.

II. A Writ in the Register intelligible only from
those arbitrarie Consecrations. a like example
to it out of the book of Osney.

III. The libertie of the Baronage anciently chal-
lenged to build Churches in their Territories.
Parochiall right to Tithes settled in Practice.

IV. Of Tithes of increase in lands not limited
to any Parish. How by the common Law they
are to be disposed of.

BESIDES the many testimonies that may be
had out of the Portions especially posses-
sed by som Churches or Monasteries, ma-
nie of which had no other beginning then from
arbitrarie Consecrations, made by owners of
Tithes, in two parts, or third parts, or other-
wise at their pleasure to any Church or Mona-
strie; the frequent memorie of Instruments of
such Consecrations (made according to the pra-
cticed Law of the time chiefly interceding from
the yeer M. till some yeers after M. C. C. of our
Saviour) is to be principally obserued in this
disquisition. The originall monuments of those
elder ages afford vs plentie of the. And in regard
of the easie connexion and more compendious
way of delinerie, we shall rather severally follow
the singular courses of euery of the Chartularies
or other monuments, which tell vs of those kind
P p of

of consecrated Tithes, then dispose together every arbitrarie Consecration according to the order of time. The severall Titles of books whence we have them shall chiefly direct in the generall order. but neither shall the particular time, of every of these selected examples of Consecration, be omitted.

a In ill. Contul.
ano.

b L. Milin.

I. The Chartularie of the Abbey of *Abingdon* shall obviously have first place. In it, in the time of *R. William* the second and *Rainald* Abbot, occurs; that *Viuent* prædicto *Rainaldo* Abbate, trium Decimationum, Ecclesiæ huic facta est vna ab *Herberto* de villa sua *Lakine*, appellata *Henrici de Ferrarijs* Milites; scilicet frugum, agnorum, caseorum, vitulorum, & porcellorum. Quod & *Robertus* filius eiusdem post patris mortem confirmans, concedente Domino suo prædicto *Henrico*, *Abbondoniam* venit, pro patris & sui suorumq; salute præfatam hie Decimationem perpetualiter tradidit; sibi fratribus suis germanis *Huberto* & *Stephano* in his fauentibus; etiam istis amicis suis videntibus *Quirio* de *Moensis*, & fratre eius *Hugone* & *Roberto* filio *Aldulfi* de *Berretuna*. Altera à *Seswaldo* de villa sua *Hildestea* caseorum scilicet & vellerum suarum omnium. Quod & hæres & filius eius *Frogerus* post eum denotè confirmavit. Quæ utræq; Decimationes luminaribus & ministerijs Altaris Sanctæ *Mariæ* ab eo die specialiter delegatæ hucusq;

in

Chap. II.

“ in hoc expendunt. Tertia à Roberto cuius
“ erat cognomen Marmian, & à filio ipsius
“ Helto de villa sua Henreda, frugum omnium
“ suæ propriæ lucrationis. Sed & post illos à
“ Radulfo cognomento Rosel idem concessum.
“ And then follows Rosel's Charter to that purpose:
“ Ego Radulphus agnomento Rosellus concedo
“ volo atque præcipio serviensibus meis ut se-
“ getes meas de Henreth deciment ad ostium
“ Grancie meæ quæ ibidem habetur & ipsam
“ Decimam rectè & fidelitè serviens S. Mariæ
“ deliberent. And this Tithe was in the sole
disposition of the Almosner of the Abbey. Out
of IV. Hides also lying in the same Henred, a
consecration of the Tithe had been made before
in the time of the Danish government, by a
“ Dane, and is thus there reported. Tempore
“ Danorum, fuit quidam eorum qui possidens
“ VII. hidas in Henreda, propter vicinitatem
“ Abbendonie & amorem S. Mariæ Virginis &
“ aliorum Sanctorum qui mihi digniter colun-
“ tur, dedit Decimam de Dominio eiusdem ter-
“ ræ Ecclesiæ S. Mariæ Abbendonensi in ele-
“ mosynam pauperum hoc est de IIII. hydīs;
“ quam terram Helto Marmian Deo & Sancto
“ Stephano Cademi dedit. Ecclesiæ verò Ab-
“ bendonensi Decima de Dominio prædicto in
“ ævum permansit. Then follows a Charter of
Henric the first, wherein all the grants of Lands,
Churches and Tithes made or thence after to be
made

made by *Alberique de Ver* and *Beatrix* his wife, their sonne *Alberique* and his brothers, or by their Tenants to the Monasterie of *Colme* in *Essex* (which was a member or as a Cell of *Abbingdon*, and erected by *Alberique* their father) are confirmed; and in them two parts of the Tithe *de omnibus rebus* in the Mannors of *Hettingham*, *Belcheam*, *Laureham*, *Aldeham*, *Dunecourt*, *Bonecleide*, and *Rodiges*, and half of the Tithe of *Walde* and *Wadane*, are recited to have been conveyed to the same Monasterie, *Et dimidia Decima Deimiblane de Cola, & Tertia pars Decime Ranulfi magni*. this is dated XI. Hen. 1. at *Reding*, that is M. C. XI. And *Faritus* Abbot of *Abbingdon* (as it is further remembered) at *Colme* solemnly received investiture or seisin of every of those and other possessions so granted by the hand of *Picot* Sewer to *Alberique de Ver*, with the testimonie of his wife, children, and many of his Tenants. And the Patent of *Henrie* the first is there extant, wherein *totam Decima de veneratione quae capta fuerit in Foresta de Windesore*, is granted to the Abbey, which was after confirmed by *Henrie* the second, *Richard* the first and others. In the same Chartularie about the beginning of the same *Henry* the Tithes of *Bulbey* of *Cildeslun* are given to the Abbey by *William* of *Sulabam*; in *Hanneby* by *Osbern* and *Tierold*; of *Offington* by the Tenants there; of *Weckenfield* by *William* of *Weckenfield*; of *Eton* by *Roger Fuz-*

Chap. 11.

Fuz. Alured. and diuers such are related, and
 the words of the most observable passages touch-
 ing them shall be here insered. Anno V. re-
 gni Henrici Regis intrante (*saies the book*)
 Willielmus de Sulabam dedit Deo & Sanctæ
 Mariæ & Abbati Farisio & Monachis in Ab-
 bendona Decimam villæ suæ quæ Bulkea vo-
 catur. die videlicet Assumptionis eiusdem S-
 Mariæ. Eodem etiam die confirmauit donum
 de alia decima quam antea dederat de villa
 Cildesuna quæ ad hereditatem Leodselina
 priuignæ suæ pertinebat, ipsa puellâ coram
 Monachis concedente donum. & cum ipso
 Willielmo & cum matre suâ super Altare idem
 imposuit, coram his testibus; Abbate prædicto
 & omni conuentu, Iohanne fratre coniugis
 eiusdem Willielmi, Humfrido eiusdem Milite,
 Hugone Conrad. But that of Turolde is thus
 exprest. Similitèr Turolde de eadem Villa
 (*that is, Hanne*) dedit Deo & Sanctæ Ma-
 riæ de Abbendona coram Farisio Abbate &
 omni conuentu, in Capitulo, Decimam omni-
 um suarum possessionum, parcelloꝝ scilicet
 agnorum, vellerum. sed Decimam Garuca suæ
 tantummodò ita discreuit, vt duas istius deci-
 mationis partes huic loco, tertiam verò par-
 tem Presbytero sibi seruienti concederet, hoc
 idem concedente & confirmante uxore sua
 Hugulina & filio suo Willielmo. & hanc do-
 nationem donauit anno V. Henrici Regis.

Here

Here specially you see as well arbitrarie diuision
 as consecration of the Tithes by the owners
 grant. And for the example of the Tithes of
Offington, the words of it are most observable
 also. Eodem anno (*sayer the Monke that*
wrote it) cum venisset Abbas *Faritus* in vil-
 lam suam *Offentunam* vt opus Ecclesie quod
 ibi lapideum à fundamento inchoauerat ad
 perfectum determinaret, congregauerunt se
 homines sui ex eadem villa & obtulerunt com-
 muni deuotione & concessione Decimam suam
 totius villæ eiusdem, S. Mariæ & ipsi Abbati
 & loco *Abbondonia* ab illo in reliquum tem-
 pus. Vt videlicet Abbas de suo proprio Eccle-
 siam eiusdem alacrius construendo perficeret
 & ipsi mererentur in fraternitate loci annume-
 rari. Hanc expetitionem cum Abbas audisset,
 inquisiuit vtrum Ecclesie eiusdem villæ anti-
 quitus Decima ab illis hominibus daretur, no-
 lens scilicet eam sua rectitudine minuerè pro
 alicuius donatione sibi suoque loco oblata. di-
 cumque est, hoc esse moris villæ vt a singula
 virgata Ecclesie illi XXXII. Garbæ pro
 Decima numeratæ donarentur. Quod sciens
 Abbas, statuit ante ipsos homines vt, sicuti ipsi
 met voluerant & optulerant, reciperet eorum
 Decimam, & ea determinatione assignatâ inter
 ipsum Abbatem & Ecclesiam eiusdem villæ,
 scilicet, vt tempore colligendarum Decimati-
 onum Abbas ipse mitteret *Offentunam* quem
 vellet

“veller de suis, & ipse reciperet à singulis, secun-
 “dum singulorum possessionem, rectam Decima-
 “tionem, & post illam totam collectam, de sin-
 “gula virgata illius villæ tot manipulos Presby-
 “tero illius Ecclesiæ tribueret quot superius
 “diximus ei deberi. reliqua verò Decimationis
 “Abbati seruariet. Here plainly, no Tithe was
 parochially paid before this Graunt, but only
 XXIV. Sheaves of every Yard Land; which
 was now diminished also by the consecration of
 the true Tithe to the Abbey. Then *Willielmus*
de Weensefeld Dedit suam Decimam ex omni sua
pecunia S. Mariæ & Monachis in Abbendon de
tribus videlicet Hidis in Weensefeld, & duabus
de Boxore, excepta vna aera quæ Ecclesiæ de Bo-
xore, adiacet. This was in 7. Hen. 2. And in the
 relation of the Tithes of Eaton, granted to the
 Abbey by Roger Fitz. Alured, it is added, *Es*
promisit quod cum Osmundus & alijs suis homini-
bus de illa villa faceret ut & ipsi de suo tenore si-
militer Decimam Ecclesiæ suæ concederent. So
 in 9. Hen. 1. Aldred & Laurence homines Ecclesiæ
 de Walisford dederunt Monachis huius Ecclesiæ
 Decimas de omnibus videlicet suis pecoribus, &
 de agrorum suorum cultura, in capitulo eorum toto
 contentu. And in the same yeer, one Ralfe gaue
 them the Tithe of his Farme or Manor of Bra-
 dendene, and assured them, he would entreat Ra-
 bert de Insula, his Lord of whom he held Bra-
 dendene, Quatenus illius permissione & concessu
 suo

*suo hoc confirmaret, ut hec Ecclesia ipsius Decima
 donatione firmitus in posterum potiretur.* The like
 gift occurs there, made by Hugh Fitz-Wic-
 gar in 10. Hen. 1. of the Tithes of Bennaham.
 And about the same time, Gilbert Basset gave
 for ever to the Abbey, with his sonne Robert en-
 tering there into Religion, the Tithe of his Land
 in Waneting, to be employed *ad usum pauperum.*
 Not long after, Hugo Dispensator Regis (it seems,
 Treasurer of the Household) granted to the Ab-
 bey, *Suam Decimationem de omni pecunia tam de
 mobilibus rebus quam immobilibus de Manerio
 Spesholt quod de Ecclesia tenebat, sua coniuge
 Helewisa fauente, coram his testibus; Poidras suo
 homine, & Anschitillo suo preposito de predicta
 villa, & multis alijs.* The like did Rasse the Ab-
 bots Chamberlain grant out of two Hides in
 Steringford. So one locelin and his sonne Ran-
 doll granted to the Abbey two parts of all kind
 of Tithes *in possessione quadam que Graua dicti-
 tur.* And one Norman, when his sonne Eudo-
 there took habit of Religion, consecrated with
 him *Decimam Domini sui de Winterburne,
 quam cui placeret Ecclesia libere donare poterat.
 qua sic concessa sub manu sacriste redacta est.*
 And among other possessions of the Abbot and
 Couent, confirmed by the Bull of Pope Eugenius
 the third, in the yeere M. C. LII. (that is, in
 XVII. of King Stephen) these Tithes granted,
 are particularly reckoned in it, as part of what
 they

Chap. II.

they did in *presentiarum iussu* & *canonici possidere*. so are the words of the Bull. Neither to other purpose are the words of the Bishops of *Salisbury*, Ordinaries of the Diocese, in their generall confirmations of Churches and Tithes to the Abbey. These confirmations of theirs came diuers yeers after the Grants made by the owners, and are at large extant in the Chartularies of the Monasterie. The first that made any, was *Hubert*, who was consecrated Bishop in *1. Rich. 1.* that is, *M. C. LXXXIX.* In the time of *Henry* the second, through the procurement of *Richard* Sacristein of the Abbey, one *Giralin de Curzum* graunted to the Abbey, *Decimam XXX. aerarum de Westlakinge quam parentes sui prius concesserant & ipso Altari sancte Marie concessit, addens de Porcellis siue Agnellis aut Caseis aut rebus alijs qua Decimari solent, Decimam, quam priores sui minime dederant. Hanc vero donationem super Altare S. Marie deuotus obtulit; triam tantum aerarum Decimam de XXX. Ecclesie de Waneting reseruata.* Then, for Tithes in *Chiltune*; it is there reported, that in *2. Hen. 2.* *Nicholas Fitz-Turold* gaue them to that Monasterie. his whole Charter is recorded, and so take it here for that part transcribed. *Notum sit presentibus & futuris testimonio huius scripti sigillo meo signati, quod ego Nicholaus filius Turoldi de Estuna pro salute anime mea parentumque meorum, & pro eo quod licitum nobis esset*

ab Ecclesia de Abbendona cœmeterium habere capella mea de Winterburna, concessi firmiter & finaliter dedi prædictæ Ecclesiæ Abbendonensi singulis annis imperpetuum habendas Decimas terræ mee quam in Dominio meo teneo in villa Chiltune. In blado scilicet ad ostium Grangie mee suscipiendo & in Caseis & in Velleribus & Agnis & Porcellis, & in omnibus quæ Decimari solent. And at the time of the Grant, it was by the Abbot Ingulph assigned to the use of the poor and strangers, that is, to the Alms-house, as indeed most other of their consecrated Tithes were: Which is yet to be seen in the accounts of the revenues of every Office of the house.

* In Biblioth.
Cotton.

Out of the * Chartularie of the
Abbey of Osney.

The Abbey being founded in 29. Hen. 1. that is, in M. C. XXIX. by Robert d'Oily High Constable of England; in the Charter of the Foundation are given to it the Tithes of the Founders Mills, that were neere the Castle of Oxford, & Decimatio Nicholai de Stodeham quam Fromundus (a Chaplain mentiond in the Charter) tenebat. and that is iterated often in other Charters to the same Monasterie. And after in the same Chartularie is a Catalogue of diuers Portions of Tithes belonging to the Abbey, and as issuing out of the Demesnes of such as had encreased the revenues of it with endowments

of Tithes newly granted. nor are they expressed with any reference to this or that Parish, but only to the Demesnes and names of the Donors.

And then comes a confirmation of *Richard Bishop of Lincolne* (within that Diocese, *Oxfordshire* was, till the later institution of a Bishopricque in *Oxford*) wherein, among the ancient possessions of the Abbey, enjoyed through their having *Saint Georges Church* in the Castle by *d'Oile's* gift, two parts of the Tithes of all things *que Decimari solent, in dominicis et maneriarum, videlicet, Bercencestre, Erdinton, &c.* are confirmed to it. Neither is the number of those Mannors there named, vnder fortie. Which way is it likely, that the Church of *S. George* came to two parts of the Tithes of so many Mannors, if not by consecration of the owners? And indeed afterward is a transcript of a Charter of *Robert d'Oily's* (that was about C. XX. yeeres before the Bishops confirmation) to the Abbey, wherein he giues three Hides in *Walton* and *Terram de Twenti* acre & *Decimam earundem terrarum, & pratum quod vocatur Brunmannes Mead, cum Decima eiusdem prati* (where note, the Land and the Tithe of the same Land is giuen, which could be but a discharge of Tithes in the Abbey) & *cum Decima de Northam, Wineleya, & Lincha, & omnium terrarum & pratorum & aliarum rerum Decimabilium que sunt inter Castellum Oxoniæ, & Heunteleyam aut Botleiam scilicet in*

da. 1130.

da. 1130.

Blacley.

Comitatu Oxoniæ. And then *Duas partes Decima,* de omni re que *Decimari solet*, de omnibus dominicis virisque honoris qui adiacent *Castella Oxenfordiæ*, videlicet de *Hokenorton, Swerefordia, Bereford, Wiginton, &c.* with a recital of above fortie Townes and Mannors, which are also in that confirmation long after made by the Bishop. In the same Book, *Richard of Dodeford* giues them in perpetuall right the Tithes de *assarto bosci mei de Hecholthe cum assartatur & excultus fuerit, siue ego siue alius per me illum assartauerit & excoluerit.* This seemes to be of about King *Iohns* time. And one *Hugh de Crostes* grants them *Decimas domini mei de Wauretun de omnibus rebus que Decimari possunt & debent, tenendas de Priore & Monachis de Tedford in perpetuum, sicut carte virique Monasterij inter eos facta testantur.* And this was in 3. Rich. 1. And a pension was yeerely payable for them to the Prior of *Tbesford* by that clause of *tenendas*, as appears in the confirmation made of the same Charter by *William* Bishop of *Hereford*. You must know, that the ancestors of *Crostes* had formerly giuen those Tithes to the Priorie of *Tbesford*, as is remembred there also.

^a In *Biblioth.*
Cam.

Out of the *Chartularie* or * *Lieger-Booke* of the Priorie of *Gisburne* or *Gisburgh* in the North-riding of *Yorkshire*.

In a Fine there of 23. Hen. 3. between *Peter* of *Brus*

Brus demandant, and Iohn Prior of Gisburne tenant, it appears, that when Robert de Brus, ancestor of Peter, vnder King Stephen, founded the Monasterie, he by grant endowd it, among other possessions, with the Tithes of his demesnes of Liburn. And in another of 26. Hen. 3. the Concord hath these words in it, *Et similiter idem Petrus concessit pro se & heredibus suis, quod idem Prior & successores sui habeant in Parochijs suis Decimam venationis sue & heredum suorum; & scenorum suorum ubicunque scenum falcabitur preterquam in locis subscriptis, scilicet in Parco sub Castro de Daneby & in IV. Laundis in Foresta de Daneby, scilicet in Launda de Souresby, Eskebriggethwoyt, Karlethwoyt, & in Launda sub Threlkeld, & in Haya de Skelton clausa ex aquilonali parte de Routheline, & in paruo Parco circa Castrum de Skelton in quibus locis nullas Decimas sceni habebunt.* That of the Tithes of Venison, taken within the Parishes of the Priorie, was confirmed in another Fine of 30. Hen. 3. leuied before the Iustices of Eire in Torkeeshire; and therein also was further added, *Concessit etiam idem Petrus pro se & heredibus suis, quod ipsi de cetero reddent singulis annis predicto Priori & successoribus suis & Ecclesie sue predictae Decimas Molendinorum suorum in Parochijs suis existentium imperpetuum.* So that if the Mills were in Lease, the Tenth of the rent was payable; if in the hands of the grantor, or his heires, the

Tenth of the multure. and for true payment, the Millers were, by the concord of this Fine, bound to doe fealtie to the Prior and his successors. But I have not seen an example of such disposition of Tithes of so late time. few or none else (I thinke) exceed the yeer of that Constitution of *Lateran* before spoken of. and remember that this is of *Tork* Prouince, in which perhaps the Decretall sent to *Canterburie* had not such effect till somewhat after, as is before touched.

* In *superior* diff.
Bibliotheca.

Out of the Chartularie * of the Monasterie of *S. Andrews* of *Rocheſter*.

Henrie the first giues to the Monks there di-
uers Churches with Tithes, Et dimidiam
Decimam meam de *Tarentford* in annona
tantum, & totam Decimam meam de *Strodes*,
& totam decimam meam de *Chealches*, & hoc
facio pro anima Patris mei & Matris meae &
pro anima mea & vxoris meae, *T. Eudone* da-
pifero & *Haymone* dapifero apud *Roueceſtri-*
am. Other Tithes of whole Mannors be giue
also to them, Et decimam * *Balenarum* quae
captae fuerint in Episcopatu *Roffensi*. And a-
bout the same time *Ralf* Archbishop of *Canterbu-*
rie by Charter giue them Totam Decimam de
meo Dominico & omnes Decimas omnium vil-
lanorum qui habent terram in *Dune*, necnon
& aliorum omnium, quorum decimae meo
tempore adquisitae sunt vel quocunq; tempo-

* He n. captae
Regis sunt. Pro-
regal. Reg. cap. 11.
¶

re

re adquirentur. Many other Charters are in it
 to like purpose, as: Ego Willielmus de Albineo
 Pincerna Regis concedo Deo & Sancto An-
 dreæ de Roucestria & Monachis eiusdem loci
 totam meam Decimam de villa mea que voca-
 tur *Elbam* in omnibus rebus scilicet de blado
 & de pascagio, & de molendinis, & de pecu-
 dibus, & de lana, & de caseis &c. & medietatem
 Decimæ de *Bilsintune* in omnibus rebus
 pro anima Domini mei Willielmi Regis &
 Henrici Regis atque pro anima mea & patris
 mei & matris meæ & vxoris meæ & fratris mei
 Nigelli, & nepotis mei Humfridi & aliorum
 parentum meorum viuorum atque mortuo-
 rum. Testibus militibus meis, Nigello de *Wast*
 &c. That d' *Aubigny* was Earle of *Chichester* or
Sussex or *Arundel* (for all these titles he vsed)
 and diuers Confirmations were afterward by his
 Successors, of this Grant. and K. Henrie the first
 also confirmed this of the first William. and the
 Prior and Couent not long after made a Lease
 of that their Tithe in *Bilsintune* to one *Gilebert*
de Perieres for I X. yeers, reseruing half a Mark
 rent payable at Easter. and this was confirmed
 by the Archbishop of *Canterburie*.

Roger Bigot Earle of *Norfolk* vnder *Richard*
 the first, and *William* his yonger sonne, had giuen
 diuers reuenues to the Priorie, and among them
 occur the Church of *Waltune*, and then by it
 selfe tota Decima ville *Waltune* de omni re &c. to

ta Decima molendinorum ad eandem villam pertinentium. this is related in the confirmation of *Hugh Bigot* Earle of *Norfolk* and sonne to *Roger*. and some other Churches were granted, but no Tithes mentioned with them. and afterward the first Charter of *Rogers* grant is in the same Volumè at large. The Tithes of *Buggeley* were given to the Priorie by the Ancestors of *Osbert de Cappualle*, and charged with three shillings yearly rent, paiaable to the Monks of *Colchester*. this instrument there remaining shews
 “ it. Notum sit omnibus (as the words are)
 “ quod ego *Osbertus de Cappualle* & *Adeliza*
 “ vxor mea, & *Humfridus* priuignus meus &
 “ hæres patris sui, accepta societate *Roffensium*
 “ Monachorum pro amore Dei & Sancti An-
 “ dreæ, & salute animæ nostræ, & omnium pa-
 “ rentum nostrorum, concessimus eis omnem
 “ Decimam de *Bugeleia*, sicut eam antecessores
 “ nostri in eleëmofynam dederunt, firmitè &
 “ stabilitè, & quietè perpetuò tenendam, red-
 “ dituris inde annuatim Monachis de *Colecestre*
 “ tres solidos quamdiu eandem tenent & habere
 “ poterunt. & hanc concessionem nostram præ-
 “ senti sigillo confirmauimus &c. this was af-
 terward confirmed by *Philip* of *Leiburn* and his
 wife *Anne*, and *Robert* of *Leiburn* Tenant of
Buggeley.

The Tithe of *Gedding* was thus granted by the Ancestors of *Payn* Shriue of *Surrey*. Notum sit

om-

omnibus presentibus atq; futuris quod ego Paganus
 Viccomes Surregie, do & concedo Decimam de
 Geddinges quam antecessores mei dederunt Deo
 & Ecclesia S. Andrea de Roucestria pro anima
 patris mei & matris mee, & pro me & vxore mea.
 & mihi concessum est ab eadem Ecclesia quod post
 obitum nostrum singulis annis anniuersarium mei
 & vxoris mee in perpetuum persoluetur.

The Tithe of Stalefield is granted to the
 Monks by D. de Monei, and sic tenendam sicut re-
 nuerunt de antecessoribus meis.

In 8. Hen. I. halfe the Tithe of Halegele was
 giuen to them by Henric de Port, the other halfe
 being before conueid to them—Decimam to-
 tam de Halegele, de qua (so speaks the Charter)
 prædictus Sanctus (that is S. Andrew) dimi-
 diam partem habuerat, ceteram verò pro amo-
 re Radulphi Episcopi, ut prædictum est, supra
 taxato tempore donauit. these others also follow.

Walchelinus Maminot omnibus Sanctæ
 Matris Ecclesiæ filijs tam posteris quam præ-
 sentibus salutem. Notum vobis facio quod
 Decimam de Dominio de Bertreia quam pa-
 ter meus pro salute animæ suæ & suorum Ec-
 clesiæ Rossensi & Monachis ibidem Deo ser-
 uientibus in perpetuam eleēmosynam dedit,
 me similiter pro redemptione delictorum me-
 orum & vxoris mee, & heredum meorum con-
 cessisse & præsentī scripto confirmasse. Quod si
 aliquid de prædicto Dominio in Rusticanam

“seruitutem translatum est vel fuerit, decima
 “tamen secundum primam donationem integra
 “permaneant. Teste *Rodberto de Binham* Pres-
 “bytero &c.

“Omnibus Christi fidelibus ad quos præsens
 “scriptum peruenerit, *Willielmus de Lamualai*
 “æternam in Domino salutem. Nouerit vni-
 “uersitas vestra quod ego *Willielmus de Lamua-*
 “*lai* diuinæ pietatis intuitu pro salute animæ
 “meæ & vxoris meæ, & liberorum meorum, &
 “antecessorum meorum & successorum, concessi
 “& hac præsentī Carra mea confirmaui Deo
 “& Ecclesiæ S. Andreae & Monachis Roffensi-
 “bus in puram & perpetuam eleemosynam, me-
 “dictatem totius Decimæ de Dominio meo de
 “*Henberst* quam antecessores mei eis dederunt
 “& concesserunt; tenendam & habendam benè
 “& in pace liberè & quietè de me, & successo-
 “ribus meis, & per manus eleemosynarij eorum
 “in vsus pauperum distribuendam; ideoque vo-
 “lo & firmiter præcipio vt prædicti Monachi
 “habeant &c.

“Omnibus sanctæ Matris Ecclesiæ filijs ad
 “quos præsens scriptum peruenerit, *Adam*
 “*Pincerna* æternam in Domino salutem. No-
 “uerit vniuersitas vestra, quod ego *Adam Pin-*
 “*cerna* cognitâ & compertâ dilectione quam
 “antecessores mei habuerunt erga Ecclesiam S.
 “Andreae Roffensis & Monachos in eadem Ec-
 “clesia Deo seruientis, Decimam de Dominico
 “Campo

" Campo meo in *Culinges* qui vocatur *Westbroo*
 " quam *Radulfus Pincerna* eis dedit intuitu Dei,
 " prædicti Ecclesiæ, & S. Andreæ, præfatis Mo-
 " nachis in puram & perpetuam eleēmosynam
 " concessi & præfenti Carta mea confirmaui, ita
 " videlicet quod *Richardus* frater meus qui suc-
 " cessit *Geruatio* Decano in personatu Ecclesiæ
 " de *Culinges* ad præsentationem meam & suc-
 " cessores sui reddent annuatim, nomine De-
 " cimæ illius, præfatis Monachis dimidiam
 " marcā argenti in crastino festiuitatis Sancti
 " Andreæ omni occasione remota & dilatione
 &c. it seems that the Parson of *Culinges* by the
 Patrons will herein declared, was to haue the
 Tithe of *Westbroke* in kind, and pay half a mark
 for it yeerly to the Priorie.

" Sciant tam præfentes quam futuri quod e-
 " go *Henricus de Malemeins* concedo & confir-
 " mo Monachis Ecclesiæ sancti Andreæ Apo-
 " stoli *Roucessrie* Decimam meam totam de
 " Dominico meo & eam vehendam quocunq;
 " voluerint & transferendam; cum ante hanc
 " concessionem solummodo granum habuerint.
 " Præterea dono eis & concedo Decimam me-
 " am de vitulis & porcellis. Has concessionēs
 " confirmo illis pro amore Dei & salute animæ
 " meæ & vxoris, & antecessorum meorum libe-
 " re & quietè possidendas assensu hæredis mei
 " & voluntate vxoris & amicorum meorum.
 " Teste &c.

And *William Hæbet* confirms the moitie of the Tithes of his demesnes in *Hainwold* (which his ancestors had granted to the Priorie) to hold free *sine omni molestia & exactione.* and warrants them *contra omnes homines sicut liberam eleemosynam nostram.*

A like confirmation is from *William of Srambrocke* of the Tithe of *Srambrocke*, granted formerly from his Ancestors to the Priorie.

William of Gurnay had given to the Priorie certain Tithes in *Edintune*, which lying dispersed, were not so commodious for the receipt of the Monks as of the Parson of the Parish. thereupon *Galiens*, grand-child to *William*, declares, that for that cause *provisum est & statutum, ut quolibet illius Ecclesie persona nomine Decimarum illarum liberaliter solvent annuatim predictis Monachis Roucestrie quinque solidos, ad festum beati Andree.* and so confirms both the gift of her Ancestor and this composition between the Parson of *Edintune* and the Prior and Couent.

Haimo filius Guidonis de Dudindale, confirms, in *puram & perpetuam eleemosynam*, the gift made by his ancestors *Gerold* his grand-father, and *Guy* his father, of all the Tithes of his land in *Dudindale.* which was afterward confirmed also by his sonne and heire *Iohn.*

Hamelinus de Columbeirs establishes the perpetuall right of all the small Tithes of his Demesnes, in the Chantor of the Priorie, to whom
by

by ancient possession of his Predecessors, hee found they belonged, when controuersie was about them, twixt the Chantor and Rals Parson of *Frenderburie*.

Willam the sonne of *Thomas* of *Ysfeld* and all his coparceners, confirme the Tithes of *Ysfeld* formerly given by their Ancestors in *puram & perpetuam elemosynam*. and further grant all small Tithes of *Ysfeld*, as of Lamb, Calf, Piggs, Fleece, and the like. *Et ut hac nostra donatio* (saies the Deed) *& confirmatio inconcussa permanent, ego Willielmus omnium fratrum meorum voluntate pro omnib' sigilli mei appositione corroboro.* which I note for the speciall kind of sealing with the eldest brothers seale only.

Henrie of *Tuange* confirms to them *Decimam de Tuange quam prefati Monachi habent de dono Smalemanni aui mei tam in Tuange, quam in Rundel.*

These Grants or arbitrarie Consecrations were all diuers yeers before the end of M. C. C. after Christ, and for the most part in the times of *Henrie* the first, King *Stephen*, *Henrie* the second, and *Richard* the first. neither need you make doubt of the allowance of them by the Clergie of that time. The Tithes so arbitrarily giuen by Lay men were not only possessed by the Priorie, but were also afterward, with others which are not mentiond in the *Chartularie*, solemnly confirmed to them by the Archbishops

of *Canterburie* with their Prior and Couent, who supplied that which now is the Deane and Chapter. for in 23. *Hen. 2.* vpon a controuersie arising about some Tithes challenged by the Priorie, a confirmation was giuen by *Richard* Archbishop of *Canterbury*, in which he grounds their right vpon the Deeds of the Grantors. *Cognita* (are his words) *iure predicatorum Monachorum per inspectionem instrumentorum suorum, considerata etiam diuturna illorum possessione &c.* and then he confirms to them all the Tithes granted to them within his Diocese, and reckons by name seuerall Tithes in VIII. Parishes, most of which occur in those examples; After which he confirms also their appropriated Churches with Tithes belonging to them. For Tithes giuen with the Churches appropriated they had as belonging to those Churches. but others seuerally consecrated were no otherwise in them then as if Rents or other profits had been granted out of lands to them. A like confirmation was made by *Baldwin* in 1. *Rich. 1.* of all Tithes in particular that were formerly settled in them by Lay mens grants. And another such was by *Hubert* Archbishop in 1. of King *Iohn*, wherein he confirms to them *omnes Decimas à quibuscunque Dei fidelibus vsque in presens in Archiepiscopatu nostro illis collatas.*

Out

Out of the Chartularie of the Monasterie of

* Reding for Leonminster or Lemster in

Herefordshire, that was annexed by

Henry the first to Reding, in

the foundation.

* In tam munita-
va Bibliotheca.

Walter Clifford, for the health of his fathers soule, and for his wife and children, giues Ecclesie de Leonminstre *Decimam de tota Hamenesca tam de dominio quam de villanis s. de omnibus unde Decime dantur tam de viuis quam de mortuis* But the Church of Lemster is called there the Mother-Church of the place, This was about King Iohns time. And Robert Malherbe giues to the same Church *Decimam de toto dominio meo de Rifeburie de omnibus, unde Decime dantur tam de viuis quam de mortuis.*

Out of the Chartularie of the Nun-
nerie of * Clerkenwell.

* Ibidem

Among many possessions confirmed to it by
 " Henrie the second, we find, Ex dono Gaufridi
 " Comitis de Essex & Eustacie vxoris eius to-
 " tam Decimam totius victus & procurationis
 " illorum & domus suæ & familiæ suæ; and, Ex
 " concessione Alexandri Prioris & Monacho-
 " rum Ecclesiæ Sanctæ Mariæ Magdalensæ de
 " Stanesgate, assensu conuentus Ecclesiæ Sancti
 " Pancratij de Lewes, omnes Decimationes illa-
 " rum

rum de feodo de *Clerkenwell* cum pertinentijs suis.

And *Maurice* of *Torbam* and *Muriel* his wife grant to the Nunnerie, Ius parochiale in perpetuo habendum in terris nostris quas habemus & tenemus de Episcopo *Londinensi* iuxta *Londoniam*, & in hominibus in eisdem terris existentibus & in certis terris nostris quæ ad Parochiam pertinent. And further, that those Lands and his Tenants should be ioind *Iure Parochiali* to the Church of the Nunnerie, Et quod homines illi reddant & faciant quæ Parochiani debent reddere & facere suæ Matris Ecclesiæ. And that the Nunnes should quietly enioy all Tithes of those Lands, according to the intent of the Grant from the Priorie of *Lewes* in *Sussex*; which also is rememberd elsewhere in the same Charrularie.

Maude of *Mandeuill*, Countesse of *Essex* and *Hereford* grants, Totam Decimam totius vicus nostri & familiæ nostræ ubicunque fuerimus de panibus & potibus & carnibus & etiam de Piscibus sicut in Carta Domini *G. de Mandeuilla* Comitis *Essexie* antecessoris nostri continetur. And a great Curse is added to all such as should disturbe or prevent the Nunnes in their enioying of that Tithe. The reference made is to that which is before mentioned in the Patent of Confirmation, made by *Henrie* the second. This of *Maude* was about the

the beginning of Henrie the third, and is but a confirmation of that of Geffrey of Mandeuill, made Earle of Essex by Maude the Empreffe.

* In Biblioth.
Cotton.

* Baloo Thomas
Ipsa dictus est.

Out of the lues * of the Abbots of S. Augustine of Canterburie, written by Thomas Sprot *, a Monk of the Abbey vnder Edward the first.

“ Eodem anno Domini (videlicet M. LXX.)
“ in villa de *Pordwico*, *Willielmus* Rex contulit
“ *Sancto Augustino* & fratribus eiusdem cenobij,
“ Ecclesias de *Fauersham* & de *Middelstune*,
“ & Decimas de omnibus redditibus proueni-
“ entibus ex illis duobus Manerijs S. de *Mid-*
“ *deltane* & *Fauersham* & Decimam de omni-
“ bus appendentibus, Terra, Syluis, Pratis, &
“ Aqua, excepta Decima Mellis & Gabuli dena-
“ riorum. Et sunt istius donationis septem Car-
“ re diuersorum Regum prater istam. That
“ *Gabulus denariorum* is rent paid in money. *Scot-*
“ *land* was then Abbot there.

In the same Abbots time, *Odo* Bishop of Bayeux, and Earle of Kent, gaue to the Abbey,
“ Decimas aliquas quas mei fideles habebant,
“ id est, *Atbelwaldus* de tribus villis quæ dicun-
“ tur *Knotton*, *Tikenberst*, *Ringeton*, & Deci-
“ mam totius terræ *Turfini*, necnon Decimam
“ *Osberni filij Letardi* de duobus locis, id est,
“ *Bedlesangre*. Decimam etiam *Osberni Pag-*
“ *fori* de villula quæ dicitur *Boockland*. Hec
“ S f omnia

omnia (as the words of his Charter are) dono
 concedo & confirmo &c. Si quis vero huic
 donationi contrarius fuerit, vel aliquam ca-
 lumniam ingesserit, eterno anathemate ipso
 facto sit reus & Regiæ Maiestatis &c. Then
 the Autor tells vs, that afterward *William d Au-*
bigny wrongfully took the Tithe of *Knolton* and
Ringelton from the Abbey, as *Roger of Memires*
 did the Tithe of *Baceland*.

In the yeer M. LXXIX. *Scotland* being still
 Abbot, *Herebert Fitz-Ivo* gaue to the Abbey,
 Decimas quinque Mansionum suarum vel cen-
 tum solidos nummorum quod in arbitrio Ab-
 batis & fratrum S. Augustini constituiturum
 Decimas ipsas vel centum solidos pro Deci-
 mis acceptarent. Those five *Mansiones*, or
 Farms, or Mannots, were *Oliue*, *Epelle*, *Of-*
prenge, *Heregedsham*, and *Langedone*. But this
 Tithe was afterward (sayes *Sprot*) wrongfully
 deteined from them by *William Peverell*.

About the same time, Abbot *Scotland* made
 a Lease of V. Solings (that is, *Salins*, or *Selions*,
 which are made the same with Hides, or Plough-
 lands, by some * good autoritie) about *North-*
bourne to one *Wadard* for life, reseruing rent of
 XXX shillings, and the Tithes, of all profits
 there accruing, to himselfe.

The same Abbot leased for life to *Amfrid*
Mauclore his Land of *Riple*, and of *Aluerune*,
 vpon like condition, that *Mauclore* should pay

* Regist. Mona-
 sterij S. Martini
 de Bello in Archi-
 uis Regis quæ ad
 Forum à Regio-
 rum prouentuum
 incremento di-
 ctum spectant,

to the Abbey all the Tithes both of those Lands
as also of his V. Mannors, *Hortum, Legu, Ernol-*
ton, Seeldrisbam, and Olfestane, and also all o-
ther Tithes of his yeerely encrease whatsoever.

Decimam etiam tam frugum quam omnium
animalium suorum & ceterarum rerum.

One *Hugh Fitz-Fulbert* had a Lease for life
of the same Abbot, of two Solings of Land in
Sihertesweld, whereupon rent of XX. shillings
yeerly was reserved, and this Condition also an-
nexed, *Ve daret etiam Decimam omnium ve-*
rum suarum quas ipse in dominio haberet.

When *Hugh of Trottesclive*, Abbot there,
founded his Hospitall of *S. Laurence*, among o-
ther Endowments, hee gave it, *Totam Deci-*
mam totius annonæ de dominio de Langeport.
This was vnder King *Stephen*.

And *Anno Domini M. C. LXXXVIII. Ro-*
gerius Abbas tradidit Priorissæ de Scapcia De-
cimas de Westland intra Parochiam prædictam
Priorissæ pro quatuordecim solidis annuatim
reddendis sacristæ S. Augustini. What Tithes
were intra *Parochiam* of the Prioresse of *Shepey*,
were by former Grant of the owner conveyed to
the Abbey.

Out of *Peeter of Blois* his continuance of
the Historie of the Abbey of *Gravel*
land in *Lincolnshire*.

At the foundation of the Church, new built
to

* In sup. 48.
Bible.

by Abbot *Iaffrid*, in the time of *Henrie* the first, a great meeting was of the devouter sort of *Torkeshire* men (specially, and others, to the number of above five thousand in all. and most of them laid stones at it, and vpon the stones, some offered Money, some the Patronages of Churches granted by Charters, others Tithes of their Lands: as for example, the words are, *Iuxta illum proximum lapidem versus Boream posuit Simon Miles & vxor eius Gulana offerentes Ecclesie Decimam de Morton, & de Schapwik, & iuxta illos proximum lapidem versus Boream posuit Reinerus de Bathe Miles & vxor eius Gode offerentes operi Decimam de Houson, & de Birtone.*

Out of the Lieger-Booke of the Abbey of S. Albons in Hertfordshire.

The Abbot and Couent, about 20. of *Henrie* the third, gaue to the Church of the holy *Trinitie de Basco*, and the Nunnes there, for ever, *Totam Decimam de dominio nostro de Cayssbe in omnibus rebus de quibus Decima dari solent*, and two parts of the Tithe Corne of the Parish of *Watford*, and some other moities of Tithes, the rest being in the Parson of *Watford*. But that of the demesnes of *Cayssbe* was newly now created, and expresse for the provision of apparrell for the Nunnes. But this being so long after the Constitution of *Lateran*, and being made only out

of their demesnes which perhaps they had discharged, doth only give an example among many, of another originall way of creation of tithes in some Monasteries, but not so much adde to or confirm the arbitrarie course of disposition of them by Lay men in times before that so frequently vsed.

“ Henricus Rex Angliæ R. Episcopo Dunelmensi & omnibus Baronibus suis salutem. sciat is me (it is Henrie the first) dedisse Deo & S. Mariæ, & S. Oswino, & Abbati de S. Albano, & Monachis de Tinemuth omnes Decimas suas per Northumberland quas Robertus Comes (that is Robert of Mowbray Earle of Northumberland, who in time of William the second founded the Priorie of Tinemuth) & homines eius donauerant eis, scilicet * Decimas de Calebrige, & illas de Quinton, & de Wylm, illas etiam de Neuburn, & illam de Disceington & de Caluerdon, & de Elstwic, & illas etiam de Botball, & de Werkwirth, & de Anebell, similiter & de Roubyrie, & de Wulloure, & volo ac precipio quatenus supradictus Abbas & Monachi de Tinemuth, bene & integrè habeant illas ac liberè teneant in mea pace, & quod nullus eis inde aliquid auferat super meam forisfacturam. T. Nigello de Alben apud Bransonam.

By the same King. H. Rex Angliæ Ramulpho Episcopo Dunelmensi, & Alfrico & Laudia

* Videtur Cor.
Anno. D. B. 14.
p. 15. & c. in quo
Lond. p. 6, 21. in
Dor.

Vicecomitibus salutem. Sciatis me concessisse & dedisse Deo, & Sanctæ Mariæ, & S. Oswino, & Abbati de S. Albano Decimas quas Hubertus de Lauall ante dederat Monachis de Tinemuda, scilicet de Setona & Calverdona, & de Disvingtona, & volo ac precipio ut bene & integrè in mea pace teneant eas, & quod nullus super eis iniuriam faciat. T. Nigello de Alben. apud Wintoniam. This was either a confirmation of a consecration made by De Lauall, or els a gift of Tithes out of the same lands, by the King, after some escheat or other new title accrued to the Crown. The Church or Priorie of Tinemud was given to the Abbey of S. Albons by William the Second, after Robert de Mowbray had forfeited the Patronage, among the rest of his estate, by treason.

Henric the second confirms to the Monks of Tinemud all their Churches appropriated, and Decimas de Corebriga, & Newburna, & de Wentewrtha, & de Rodbiria, & de Botala & Wlonera, & de Wylum & Dientona, & de Calverdona, & de Alswicha, & de Anibella, & Decimas de Domimo de Herth, & de Setona, & de Tunestall, & de Daltona, & de Mideltona, & de Oumthuna. All which were, without Churches, formerly and in perpetuall right consecrated by the owners deuotions. the like often occurs in confirmations made to them by the succeeding Kings.

Chap. II.

In 7 Rich. 1. Hugh of Pudsey Bishop of Durham, confirms to the Monks of Tine-muth, Omnes Decimas & obventiones tam in blado quam in alijs decimationibus tam de dominijs Regis quam Baronum, siue aliorum fidelium & propriarum villarum, & dominiorum, tam in Northumbria quam in Halimarches-folk (that is in the Territorie of the Bishopricke of Durham) ita plenarie & libere possidendas, sicut eas plenius & melius habuerunt vel habere debuerunt, tempore nostro vel antecessorum nostrorum, & sicut donatorum Cartae testantur. And some other Churches of such generall ratification they haue from the Arche-bishop of York.

In the instrument of foundation of the Cell of Belveir, made between Abbot Paul and Robert of Belvedeir or Belveir, or de pulchra visu, that Robert grants it the Tithes of all Lands that he should hereafter purchase. Omnium terrarum quasclunque per Dei adiutorium & concessum Regis in suum dominium adquirere, quocumque modo possidet, dedit & concessit Decimas eidem Ecclesie sancte Marie; that is to the Cell; which was at first purposed for a Parish Church, but by aduice of Archbishop Lanfrank was conuerted into a Cell. Dedit etiam & concessit Decimas Kincarum suarum omnium & sedem molendini in proxima aqua, & concessit Decimas decem villarum ad prasens, ex suo videlicet dominio annuatim, omniumque rerum de

de quibus Decima danda est & datur, semota quidem versis parte Presbyteri villa. The names of the Mannors or Towns of which he thus gaue two parts of the Tithes, are, Horton, Fraton, Saperon, Rusbendon, Stoches, Wiberteston, Segeton, Medburne, Wivell, and Wlstanestorp.

Robert of Piriton gaue to the Abbey, the Church of Saint Marie that he had built in Piriton; and endowd it with gift of all the Tithe, *eiusdem ville sui domini & omnium suorum hominum ibi manentium omnium illarum rerum de quibus recte Decima datur;* And in Nicenton he gaue all the Tithe of his demesnes only. In Cauendeis & Hocaton & Aperston, *Decimam domini sui, excepta cantaria.*

Ralf of Limesi gaue to the Church of Saint Marie also that he built in Piriton, *Decimam suam in eadem villa &c. & Decimas hominum eiusdem ville ipsis libenter concedentibus.* Apud Nicentonam dedit duas partes Decime sue &c. apud Hulferslea dedit similiter duas partes Decime sue & apud Eprestunam similiter & apud Cauendeis & Hocktentunam. And these endowments are there called *beneficium Ecclesie.* These and other Tithes so seuerally granted are confirmed to the Abbey by Alan de Limsey, Gerard de Limsey and others of the posteritie of Ralf. The Tithe of the Agistment of Bibesworth wood, also was granted by Ralf, and of other Agistments, with promise also that if the woods were affor-
ted

ted or improved by culture, the Abbey should
have Tithe in kind of the improvements. The
whole Deeds of conueiance are there at large,
and a Bull of confirmation was long afterward
obtained from Pope *Alexander* (as I thinke) the
fourth.

W. Peuerell giues to the Monks of *Hatfield*
"Decimam denariorum meorum de *Meldona*,
" & rectam Decimam de *Dona* de omnibus re-
"bus de quibus recte datur Decima. And then
addes Churches of other places cum Decimis
that was in *Henrie* the first's time.

Out of Matthew Paris * *his lines of the*
Abbot of S. Albons

In the time of Abbot *Paul*, vnder *Henrie* the
first. Data est, scilicet, huic Ecclesie Decima
de *Cundella*, & Decima de *Riginton*, & De-
cima de *Romney*, & de *Brethelham*, & de *Her-*
elaga, & de *Thamseford*, & de *Clifton*, & De-
cima quatuor villarum istarum s. *Hunteslege*,
" *Gerribam*, & de *Brumfield*, & *Redlang*. Et
" duae partes Decimae villarum istarum s. *So-*
ldinton & *Boctona*. Et tota Decima de *Trum-*
pton, duae partes Decimae de *Wacerleia*. Por-
" ro in *Hertfordshire* duae partes Decimae de *E-*
senden & *Bisford*, & de *Hertfordshire*. And
other like.

Dr. Robert *Walter* *to* *John* *Walter* *2* *ms* *Out*

* In eodem
Biblioth.

*Out of the Chartularie of the Priorie of
Boxgrave in Suffex.*

About the yeer M. C. LXXX. a confirma-
tion is made by *William S. Iohn*, of what had
been formerly granted to the Priorie by his An-
cestors; and among other possessions, occurs
“ *Decima de Chienore*, and *Decima omnium*
“ *nemorum suorum de honore Halmaci* in pais-
“ *sonne & venditione, & alijs exitibus.* And this
William for the maintenance of a fourteenth
Monk (there being but thirteen by the first founda-
tion) which he added, gave, *Decimam gabulo-*
“ *rum suorum de Estretinton*, and other places. &
“ *ex dono Petri de Hampton decima molendini sui*,
is related to be theirs.

The same *William* in another Charter grants;
“ In subscriptis Ecclesijs scilicet *Walboron*,
“ *Barnabam*, *Hantoneta*, *Honestum*, *Mandebam*,
“ *duas portiones de terris & decimis omnibus*
“ *quæ ad ipsas pertinent* (for the third parts were
assigned by him, and the Bishop, and the Prior to
“ *Vicarages*) & in omnibus præscriptis Eccle-
“ *sijs aduocationem liberam & presentationem*
“ *Presbyterorum qui in sua persona in illis Ec-*
“ *clesijs Deo assidue deseruiant &c.* Et reddidi
“ *Decimam Gabulorum de Stretinton*, videli-
“ *cet VIII. solidos per annum*; and the Tithes
of other Rents.

Robert S. Iohn, brother of this *William*; gives
De-

Chap. II.

Decimam omnium gabulorum de Walberton,
 & Decimam omnium gabulorum totius vil-
 le de Bernham quam frater meus Willielmus
 de S. Iohanne dedit mihi, ad tenendum in ser-
 vicio Dei quartumdecimum Monachum in
 Conventu Borgeane, quia prius solum trede-
 cim fuerant. Quod si quartusdecimus ibi de-
 fuerit, Tustinus nepos Duneline vel heres suus
 colliget & tenebit eas usque ad annum inte-
 grum; si vero ultra; dabuntur pauperibus &
 viduis, & Orphanis duarum villarum. Teste
 Willielmo de S. Iohanne, Waltero & Willielmo
 Capellanis, Rogero Hai, & Thoma filio suo, Ro-
 gera de Kausnei. And a confirmation is there
 also by William S. Iohn of the gift (that is of the
 profits receiued by the Lord in money or rent.)
 which lay indeed properly in the Lessors grant.
 and therefore also William the Lessor had by an-
 other Charter granted those Decimas Gabuls to
 Robert, to the same purpose, which he expresses
 in his Deed of consecration to the Priorie. the
 Lessor's grant to him, the confirmation and his
 consecration were enough to settle this Tithe
 rent in the Monasterie, but clearly this could not
 have discharged any former right of Tithes in
 kind payable out of the Land. *Monachis de Bernham*
 The Churches of Warberton and Bernham and
 the rest before named with others were, with
 the belonging Tithes, appropriated to the
 Priorie, but the Tithes alone of Thadeham and
 Kenor

Kienar (which they call *Chianer*) were by grant from the Ancestors of the *S. Johns*, seated in the Priorie and neuer named with any Church, as appears in sundrie Confirmations of them. So also is *Decima de Luperinges*, in the ratification of such Grants to them made about that time by *John* and *Seffrid* Bishops of *Chichester* and *Richard* Bishop of *Canterburie*. Of that Tithe of *Luperinges* see more within a few lines.

Sciunt presentes & futuri quod ego *Richardus de Tresgoz* filius *Philippi Tresgoz* dedi & concessi, & hac presenti Carta mea confirmavi Deo & Ecclesie *Beate Marie de Boxgrave*, & Monachis ibidem Deo servientibus pro salute anime mee & uxoris mee & antecessorum meorum, & ut missa pro anima mea, & uxoris mee, & pro animabus patris & matris mee, & antecessorum meorum, in predicta Ecclesia de *Boxgrave*, ter in vnaquoque septimana celebratur, omnes donationes quas habent de donationibus *Philippi* patris mei & antecessorum meorum tam in terris quam in Decimis magnis & minutis, in Manerio meo de *Hamptonele*. Et insuper dedi & concessi & hoc scripto autentico confirmavi predictis Monachis de *Boxgrave*, omnes minutas decimas de predicto Manerio meo de *Hamptonele*, scilicet in agnis, in vitulis, in pullis, in porcis, in aucibus, in lanis, in caseis, in pomis, in fructibus, & in omnibus alijs rebus vndecumque. Per

cima

Chapter XI.

66. *cum* S^{an}c^te Ecclesie spectantur proinde
67. *et* habentur majores videlicet quam minores.

“Et vniuersum donatio et concessio perpetua
“...triginta annis scripta

“In testimonio de sigilli mei munimine roboravi.
 Roma, mensis Martii, die 18. 1668. Scabellius.”

« His testibus Roberto persona da Strarbetine,
« Scrobiano Capellano, Philippo Bernabuse, Wil-

616 "Giulio Capellano, Filippo de
617 "Giulio Piroth, Wilhelmo Purcz, Philippo de
618 "B. 18. 8. 18. 18. 18. This was in the same

"Perhaps, & multitalijs. This was in the same
time, under Henry the second. *multitalijs* may be
the name of a castle, or a place, in the Princip De.

Gregory of Cotenill gave to the Priore De-
giam de Krenne de toto dominio suo in

torris & cultis & incultis in Pomerijs in Polci-
& iis & Molendinis lin perperam & liberam E-

leemofynam faluā tertia portione totius Den-

“an^o de Hildesbam pertinet cum tota Decima de
“vilapago n^ostr^o. Et vt hoc firmiter teneatur,

“vilanagio meo. Et vñ hoc minuter
“figillo meo confirmavi hoc scriptum hie testi-
“cat. Hic fidei de Sarrill & c. p. omni & obscurat”

Roberts of Colewell grants them Dues por
Decima Garbatum de toto dominio

tionem Decimz Garbatum d'p'oto domine
meo de Kione in perpetuum & superam De

"In leuofynem ex donatione cunctis foris in eo-
"Sunt fiji pene collatum op mutatis inis alliv

...iffi Sciant presentes & futuri quod ego Rodericus
Notarius de S. Georgio & Agathe vicarius de M...

"*Sancti Iheronimi coram archiepiscopo controllerum*
Deo. R. S. Mariae de Mondchis de Buxemb.

monachynam quam prius dederat eis *Basilie* mater
 ipsius *Radulphi*. Et ipsi Monachi debent fa-
 cere habere Ecclesiasticum seruitium in Eccle-
 sia sua de *Lebenora* vel in Capella sua de *Brid-*
deham hominibus predicti *Radulphi* moranti-
 bus apud *Liparinges*, & in singulis Hebdoma-
 dis vnum seruitium pro anima *Basilie* & pro
 cunctis fidelibus defunctis donec predictus
Radulphus vel heredes sui ibi fecerint quod-
 dam Oratorium, in quo vnus de Capellanis
 Monachorum faciet predictum seruitium in
 Hebdomada. Testibus *Ranulpho* Capellano
Ricardo Capellano de *Boxgraeue*, *Roberto Li-*
gato, & alijs multis. This was about King
John's time.

In Biblioth.
 Cotton.

Out of the Chartularie of S. Neots or
 Needs in Huntingdonshire

Omnibus Sancte Matris Ecclesie filiis Se-
 berus de *Quincy* salutem. Sciatis me concessisse
 & confirmasse Monachis S. Neoti Decimatio-
 nes quas antiquitus habuerunt de terra mea in
Grantesfete, & totam Decimationem domito-
 riorum que fuerunt *Robertus Pasfiron* in eadem
 villa tam terrarum quam virgultorum & vine-
 ribus &c. Alike Instrument of Confirmati-
 on from him is of two parts of the Tithes of
Subyland of a third part of the Tithes of *Eins-*
burie, which had been likewise formerly settled
 by arbitrarie consecration, in the Monasterie.

manylom

8 T

This

This was about the fourth year of King John, and
 was confirmed by the Bishop of Ely. *W.*
 "Sciunt presentes & futuri, quod ego *Albi-*
 " *Rasfron* concedo & per hanc Cartam con-
 " firmo Deo & Ecclesie S. Neoti fratribusque
 " meis, eiusdem Ecclesie Monachis, Decimam il-
 " lam quam *Robertus Rasfron* annis meis & *E-*
 " *stacius* pater meus eis dederunt & concesserunt,
 " s. de terris & pecunijs totius domini mei
 " in *Grantsford* & in *Suba* & in *Weston* duas par-
 " tes Decimae: & iuxta Ecclesiam de *Grantsford*
 " unam mansuram quam pater meus cum eadem
 " Decima eis concessit &c. Hoc donum factum
 " est anno, quo Rex Anglie *Henricus* secundus
 " duxit exercitum apud *Tolosani* *und* *do* *aw*
 " Sciunt presentes & futuri, quod ego *Galfridus*
 " filius *Suani* & *Hathewis* vxoris mee & *Adam*
 " filius noster concessimus Deo & Ecclesie sancti
 " Neoti & Monachis *Beci* (ubi Priorie was) &
 " Cell of the Abbey of *Bec* in Normandie) ibi-
 " dem Deo seruiantibus, pro salute nostra, duas
 " partes Decimae bladi & omnium rerum quae
 " Decimari debent illius *Hyde* terre in *Oraton*
 " quam tenuit *Adelwoldus* *Flammingus* annis
 " predictae *Hathewis*, quas ipse dedit Ecclesie
 " S. Neoti in perpetuam & liberam Eleemosy-
 " nam. Tunc & c. *und* *do* *aw*
 " Ego *Robertus Wasse* concessi Deo & S. Ma-
 " rie *Beci* & S. Neoto Confessoris & Ecclesie
 " eius de *Ernlesberie* & Monachis qui ibi de
 " serui-

"ferunt, duas partes totius Decime meae de
 "Wereslas in omni videlicet substantia mea, in
 "segetibus & animalibus unde Decima dari de-
 "bet, & hoc fieri precipue pro anima Sani de
 "Esseffas & pro salute domini mei Roberti filij
 "perditi Sani qui mihi hanc terram dedit &
 "pro salute Gannon uxoris sue & pro salute
 "mea & uxoris mee & Willhelmi filij Gerei pa-
 "tris sui & pro anima patris mei & matris mee
 "& fratris mei & omnium amicorum & anteces-
 "sorum meorum hoc. This was afterwards con-
 "firmed by the heirs of Robert Wasse, but in the
 "Confirmations it appears, that Torold Wasse had
 "also granted it before Robert. Torold, I thinke,
 "was Roberts father, and had granted it about
 "the second his time.

"In the Titles of the Deeds there, is Carta Ro-
 "berti de Ferrers de Decimis de Benewell, but the
 "Charter itself is wanting.

" In eodem
 "Biblioth.

"Out of the Chartularie of the * Hospital
 "of S. Leonards in Yorkshire.

"Stephanus Rex Anglie Archiepiscopo Ebo-
 "rum, iusticiarijs, Vicecomiti, Baronibus, mil-
 "litis & omnibus fidelibus suis Eboracshire,
 "salutem. Sciatis quia concessi & dedi in per-
 "petuam Eleemosynam pro anima Regis Hen-
 "rici Adm. Calitani & pro salute anime mee,
 "& Matildis Regine uxoris mee, & Eustachij fi-
 "lij mei, & aliorum predecessorum meorum Dec &
 "Hospitali

Chap. I. n.

Hospitalli Sancti Petri Eborum omnem Decimationem de Theloneo villæ de *Thicabilla* & omnem Decimationem Molendinorum eiusdem villæ & præter hæc V. bouatas terræ in *Wlnerbuat*, & vnā bouatam in campo de *Bagalaia*. Quare volo & firmiter præcipio quod benè & in pace & liberè & quietè & honorificè hanc Eleemosynam teneant, quicunq; honorem de *Thicabilla* habeat, sicut Eleemosynam Deo & pauperibus Christi in perpetuum datam. Teste Henrico de *Essex* & Adam de *Belin* & *Willielmo* de *Clarasai* apud S. Edmundum. But in the Bulls of Confirmation from diuers Popes made to the Hospitall, no mention is of these Tithes.

Out of a Ms. of Constitutions, Charters, and Writs, touching the Prouince and Church of York.

* In Biblioth. curia.

Del Dei gratia *Carleolensis* Episcopus. Omnibus sanctę matris Ecclesię fidelib; in Christo salutem, & orationem: Notum sit omnibus & videntibus & audientibus has litteras nre dedisse & concessisse Decanatui Eborum & *Willielmo* Decano & omnibus eius in Decanatu successoribus Decimas Molendinorum de *Parhelinton* & de dominio meo & de tota socha. Sic enim prouisum fuit & constitutum à Rege *Henrico*. Constitutum autem & confirmatum est de omni possessione debere Decimas dari

V u

tam

ram in Molendinis quam in rebus alijs, ideoq;
 autoritate Apostolicâ & nostrâ per excommu-
 nicationis sententiam prohibemus ne aliquis
 has Decimas Molendinorum auferre & dimi-
 nuere præsumat. Regia tantum dignitate ex-
 cepta, in quam nullam dare præsumimus sen-
 tentiam. *Valete.* This *Ael* is *Æthelulph*, the
 first Bishop of *Cartool*, Confessor to *Henric* the
 first, who first made it a Bishopricque in M. C.
 XXXII.

*Out of old Charters remaining in the
 hands of that Noble Knight Sir*

Robert Cotton.

Augen.

R. Dei gratia *Cicestrensis* Episcopus G. De-
 cano cæterisque fidelibus Sanctæ Ecclesiæ sa-
 lutem & benedictionem. Sciatis me concessisse
Brunkino de *Hasting* dare Decimam suam to-
 tam de dominio suo de terra quam ipse tenet
 in *Marisco* de *Penensel* Deo & Ecclesiæ sancti
Martini de Bello (to the Abbey of *Battell*)
 pro anima sua & omnium parentum suorum
 salute. Concedo etiam hanc Decimam & om-
 nes alias Decimas quas ipsi Monachi de *Bello*
 habent in Parochia mea quatenus eas liberè &
 quierè teneant & possideant imperpetuum ab-
 que omni molestia; videlicet nominatim Deci-
 mam *Vulwini* de *Henam*, Decimam *Sewini* de
Glurinsune, Decimam *Lewini* de *Badeberste*,
 Decimam quam Parochiani Ecclesiæ Sanctæ

Maria

Chap. II.

« Marie de Bello dant de Nedrefelde, Decimam
 « quam Ailricus de Ora dat, Decimam de He-
 « linsfelde quam ipsi Parochiani Sanctæ Mariæ
 « de Bello dant, Decimam de Bocebolte, & Deci-
 « mam de Brombam quam Ailwi & Aethelida
 « dederunt cum filio suo Benedicto quando effe-
 « ctus est Monachus absque omni calumnia in
 « perpetuum tenendam. Similiter etiam & om-
 « nes Ecclesias & Decimas quæ eidem Ecclesiæ
 « datæ sunt, vel quas eadem Ecclesia & Mona-
 « chi tenent in Parochia mea ut eas liberè & qui-
 « etè teneant Episcopali autoritate confirmo.
 « Vnde vobis & omnibus successoribus vestris &
 « omnibus Christi fidelibus me eis inde aliquam
 « molestiam, vi, aut venditione, vel qualibet oc-
 « casione faciatis, super anathematis vinculo de-
 « fendo. T. Henrico Archidiacono, Rad. Ca-
 « pellano, Calone Cantore. Neither the whole
 name of the Bishop, nor the date, are found in
 the Instrument. But it appears by the hand, and
 that R. designing the name, to be of the time of
 Henrie the first, and made by Ralf then Bishop
 of Chichester.

In a Deed of William Earle of Warren and
 Surrey, made in the time of King Stephen to the
 Priorie of Lewes in Suffex, after some immuni-
 ties given them in all Lands which they held of
 his see, this Grant follows: Dono etiam illis
 « de omnibus doninijs meis plenariam Deci-
 « mam, videlicet, de Blado, de Forno, de Agnis,

de Velleribus, de Caseis, & plenariam Deci-
 mam denariorum de omnibus redditibus meis
 de *Anglia*. Quamvis autem ex illis denariis
 in procuracione mea siue aliorum quorumli-
 bet expendatur, ex illis tamen plenaria supra-
 dictis Monachis reddatur Decima. Et si do-
 minium meum aut redditus mei creuerint, co-
 tendis crescat & Decima Monachorum. Hæc
 supradicta ego pro salute animæ meæ & pro
 animabus antecessorum meorum prædictis
 Monachis concessi & hac mea præsentī Carta
 confirmavi quando feci dedicari Ecclesiam
 Sancti *Pancratij* (that is, the Priorie of *Le-*
wes) & de Decima denariorum de omnibus red-
 ditibus meis de *Anglia* dotaui ipsam Eccle-
 siam, & inde seisiui eam per capillos capitis
 mei & fratris mei *Radulphi de Warennæ*, quos
 abscidit cum cultello de capitibus nostris ante
 altare *Henricus* Episcopus *Wintoniensis*. Teste
Teobaldo Archiepiscopo *Cantuariensi*, *Henri-*
co Episcopo *Wintoniensi*, *Rodberto* Episcopo
Barb. Ascelino Episcopo *Rouecesr.* qui eandem
 Ecclesiam dedicauerunt, & Teste *Edwardo*
 Abbate *Rading*, *Waltero* Abbate de *Belle*, *Wal-*
tero Priore *Cantuariensi*, *W...* Archidiacono
Cant. *Ricardo* Decano *Cicesr.* *Rodberto* Ar-
 chidiacono, *Johanne de Pagham*, *Willielmo*
 Comite *Cicesr.* *Rad.* de *Warrenna*, *Reg.* de *war.*
Hugone de *Petrep.* *Radulpho* de *Pleix*, *Rod-*
berto de *Wefnevall*, *Rodberto* de *Friewill*, *Rod-*
berto

bert de Pirep. Willielmo de Pirep. Adam de Puringer. Gundane de Mercenre. Willielmo filio suo. Willielmo de Drafeta. The intent of this was to settle the Tithes of all his revenues wheresoever through England, in the Priorie. In kind, of his demesnes; in money, of his Rents. neither did he grant only the Tithes of what he then was seised of, but of all future purchase allso and improvements. that liverie of seisin, as it were, made vpon the Altar by the Haire of the head, both of the Grantor and of his brother, is not without other example of those ancient times wherein both Tithes and other possessions were solemnly consecrated, either by haire, or a horn, or a cup, or a knife, or a candlestick, or whatever that might really be deliuered on the Altar. For, the forme of conueiance in perpetuall right, both to the Church and Laitie, was to giue into the hands of the Grantee or Feoffee some such thing, as at this day a Twig or a Turff is in feoffments, or as in Institutions (according to the Formulatic of the Court of Rome) a Ring is to be giuen, and the Altar was vsually made the place of such a liverie. But in the examples of cutting the haire especially in this where Henric Bishop of Winchester doth it, perhaps more was vnderstood then only a liverie vpon the grant. had it not also some reference to the ancient ceremonie of cutting the haire at a Confirmation: which was vsually done by the Godfathers,

a Videlic. App.
ad Council. Latran.
par. 47. cap. 5.

b. Fugate. lib.
fol. 512. b.

e De Miras. 3.
Benedicti lib. 1.
cap. 14.

others, as may be collected out of that of *Adre-*
wald, where he speaking of *Charles Martell*,
saies, that *Pepigle* *brother* *fader* *cum* *Luitprando*, *ei*q;
filium suum Pipinum *misi* *ut* *more Christianorum*
fidelium eius capillum primum asconderet; *as* *pater*
illi spiritualis existeret. I dare affirm nothing with
confidence herein. But it is specially observable
that this Charter of the Earle of *Surrey* was not,
it seems, made without great aduice as well as
testimonie, both of Clergie and Laymen. wher-
to you may adde the iudgement of *Theobald*
Archbishop of *Canterburie*; in his reprehension
of *Ala*, Countesse dowager of *Warren* and *Sur-*
rey, for not payment of the Tithes of her dowrie
according to the Grants of the Ancestors of her
husband. The original of the admonition to her,
speaks thus: *T. Dei gratia Cantuariensis*
Archiepiscopus Anglorum primas & Apo-
stolicæ sedis Legatus. Dilectæ filiæ suæ Ala,
Comitissæ Warenne salutem, *peruenit ad au-*
res nostras religiosorum fratrum Levensis Ec-
clesiæ Monachorum, *stupenda querimonia*
quam cum ipsi ex antiqua donatione Comi-
tis Warenne, videlicet Aui & patris Wil-
helmi viri tui, & sui ipsius etiam antequam
Dotem tuam consecuta fuisses, de omnibus
Dominij Comitis Decimationem Denario-
rum semper inconcussè, tanquam Ecclesiæ suæ
dotem possederint, tu, post perceptam dotis
tue investituram, eiusdem fratribus ipsam De-
cimationem,

d In Thesoro
Cottonian.

Ad Anglorum d
A. 1177.

Chap. III

" cimationem, quæ ad Dotem tuam spectabat,
 " subtraxeris. Quod si ita est, vehementer admi-
 " ramur cum eorum quæ Deo & Ecclesiæ sunt in
 " elemosynam collata esse noscuntur nihil doti
 " tuæ vendere debeas nec possis. Crudele n-
 " est & sacrilegio proximum quod super dini-
 " mum Altare semel deuote oblatum est iterum
 " repetere, & ad secularia transferre. proinde
 " tibi salubriter consulimus, & in Domino ad-
 " monemus quatenus sicut vis ius tuum tibi à
 " Deo libere conservari, ita ius suum cum inte-
 " gritate Monachis relinquant. Senullatenus da-
 " tam eis denariorum decimationem dotis tuæ
 " retineas, alioquin eis in iustitia deesse non
 " poterimus, cuius debitores omnibus existim.
 Although he speaks only of the Decimatio dena-
 riorum, yet in regard that he mentions it with
 de omnibus Dominij Comitib, it cannot be well
 vnderstood otherwise then of all the Tithes of
 the Earles possessions, according to the former
 grant.

Richard de Machebegre about King Iohns time,
 confirms to the Abbey of Persore two parts of
 the Tithes which was wont to be paid to it out
 of his land of Wilhauesbulle, tam bladi quam lini
 & feni (exceptis liniis Cartilagij mei de Dominico
 meo de Wilhauesbulle) as also the third part of
 the Tithes of his Tenants there, and further
 grants them Duas partes decimarum bladi de om-
 nibus assartis meis ibidem de nouo factis & de om-
 nibus

nibus assatis per me vel per heredes meos in posterum faciendis &c. this is sealed. the seale is circumscribed with *St. Richards de Wlbauesbule*.

W. Prior of Lewes in Suffex gives in 44. Hen. 3. foreuer to the Priorie of *Southmark*, Decimas quas habuimus de *Dominico Henrici de Holeyge apud Reygate*, reseruing yearly two shillings and six pence to be paid for them to the Sacrifice of the Priorie of *Lewes*. How could this Tithe haue been in the Prior of *Lewes* to haue granted without a precedent consecration from *Holeyge*, or some other, from whom he had deriud his estate?

“ *Willielmus Dei gratia Wintoniensis Episcopus, Stephano Archidiacono, & omni Clero Surreie, & Baronibus, salutem & benedictionem. Notum sit vobis quod Sewardus de Baldestede venit, me presente ad Sudwicheam, ibique super Altare diuina preuentus gratia obtulit Decimam de Hudebrake Deo & eiusdem genitrici & Virgini Marie, & Canonici ibidem Deo seruientibus perpetually, & hoc meo consensu. Quare iubeo ex parte Dei & mea ne quis eam retineat vel ab eadem loco auferat, vel possidentes illam perturbet. Si quis vero contra hoc preceptum quicquam inde facere presumpserit, perpetuo anathemate feriatur. Cuius rei testes isti sunt Henricus de Twin, Stephanus Archidiaconus, Liuingus de Coleris Canonici, Rogerus Canonici,*

Out of an Originall Charter of K. Stephens, made
to the Prior of Eye in Suffolk. It was in the
hands of that Learned and Honorable the
L. William Howard. I had the vse of
it through the courtesie of that
Noble Knight S. Robert
Cotton.

Quoniam, diuina misericordia providente,
cognouimus esse dispositum, & longe lateq; pre-
dicante Ecclesia, sonat omnium auribus diui-
gatum, Quod elemosynarum largitione possunt
absolui vincula peccatorum, & adquiri celesti-
um pramii gaudiorum. Ego **Stephanus Dei**
gratia Anglorum Rex, partem habere volens
cum illis qui felici commercio celestia pro ter-
renis commutant, Dei amore compunctus, &
pro salute animarum mearum & patris mei, matrisq;
meae, & omnium parentum meorum & ante-
cessorum meorum Regum **Wilhelmi** scilicet
Regis Aui mei & **Wilhelmi** Regis Avunculi
mei & **Henrici** Regis Avunculi mei, & **Rob-**
erti Males, & consilio Baronum meorum, con-
cedo Deo & Ecclesie **Sancti Petri de Eye** &
Monachis ibidem in Deo seculitio congregatis,
vt habeant omnes res suas quietas & liberas ab
omni exactione, & teneant eas in Terris, in De-
cimis, in Ecclesijs, in omnibus possessionib; sicut
viquam melius & honorabilius tenuerunt tem-
pore **Roberti Males,** & tempore meo antequam
Rex

Chap. II.

Rex essem; cum *Sora* vel *Sara*, & *Tol* & *Tien* &
infanganathief. ✠ Præcipio etiam ut teneant de
quocunq; tenebant (& non mittantur in placi-
tum) sicut tenebant die quā *Henricus Rex* fuit
vividus & mortuus; & die quā ad Regni Coronam
perueni. Sit etiam ipsa Ecclesia in meo Domi-
nio cum rebus subscriptis. Concedo Ecclesiam
de *Holesto*, de *Dineuer*, de *Bordenis*, de *Sut-*
ton, de *Stadebroc*, de *Wingefel*; Et merca-
tum & theloneum de *Oreford*; præter nauium
quæ pertinent ad firmam de *Donerou*. pp ✠ *Tand propri.*
XXX. fol. Ecclesiam ipsam ubi Monachi habi-
tant cum terris suis; Decimam de *Eia*, Duode-
cim solidos de foro, vnam feriam per quatuor
dies ad festum *Sancti Petri* Kalendas Augusti,
nullusq; in feria habeat potestatem nisi Monachi
& homines eorum, & omnes illuc venientes &
indè redeunt habent meam firmam pacem,
nullusq; eos in aliquo disturbet super X. libras
forisfactura. ✠ Habeat etiam Ecclesia eandem
libertatem de Episcopo, de Archidiacono, de
Decano, quam habuit à tempore Regis *Eadwar-*
di, & à tempore *Eadrici* de *Lexfelda* & Regis
H. ✠ Sitq; de Priore ponendo & remouendo
sicut cōstitutum fuit in tempore *Rotberti Malei*.
✠ Habeat etiam omnes Decimas de Manerijs si-
cut habuit in tempore *Rotberti Malei*, scilicet de
Eia, *Stadebroc*, *Radingefeldis*, *Dineuer*, *Tatin-*
ger, *Bedingham*, *Kelston*, *Olesthia*, *Loest*, *Don-*
wic, *Lessfeld*, *Bergebi*, *Willeburn*, *Saggebroc*.
Colum.

Colum. Cuius. ¶ Concedo etiam Ecclesias has,
De Bewescia, Saggelrac, Bergebi, & Ecclesias
de Donewico, quales sunt & faciendae. De Be-
dingebam, Bessfeld & Presbyteriam eiusdem villae,
& de omnibus meis filiis Decimam pascuagij. Pis-
cariam etiam de Wells. Atque totam Bedesfeldiam,
Ssorda, Pelecoo, Frasingefeld. Hoc etiam terram
quod habebant in tempore Roberti Maler. in Be-
dingebam, & omnia inconcussa teneant. Conce-
do etiam Ecclesiam Sancti Botulfi de Ica cum
appendicijs suis quam dedit Willielmus de Ra-
uill, & Beawia uxor eius, & terram Godem, de
Iakt. & ea quod habebant in Donewico eodem
Roberto vivente. ¶ Horum igitur supradicto-
rum socam & faciam in omnibus concedo, & no-
minatim in Donewico & Decimas meorum ho-
minum, Walteri scilicet Arbalestarij, & Eccle-
siam Sancti MARGARETÆ de Halgestowe,
& terram quae ei pertinet. Decimam quoque Ro-
gero filij Walteri de Huntingefeld, & de Benges,
Ricardi Honesell de Wiuerdest, de Gestingesb, Ri-
chingeal, Reindan; Decimam Hugonis de Alui-
lario in Brom; & in Selsbangers, & hoc quod
Aluin Presbyter tenet de eo in Beria. Decimam
Willielmi de Rouilla in Clakestorp, & in Glem-
bam, & de XXX. acris quas tenet Willielmus
Bote de feudo Comitis Britannie; Decimam
Willielmi Gulasri vnebennel; Decimam Petri de
Bedingefeld; Decimam de Pleesford, & Ecclesiam
ville & Aluricum Delsen cum sua terra; Decimam

Her-

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Chap. II.
 Hernaldi filij Rogeri in Witingebam & Asebrton;
 Terram Osberti de Cratcuill in Acolt; & hoc
 quod Benedictus Capellanus tenebat de Roberto
 Malato in Decimis; & rebus alijs; Decimam
 Will. De pesenbale; Decimam Jordani de Wile-
 bebe; V. sol De pentenbale, quas Will. de Romilla
 dedit; III. solidatas quas tenet Johannes filius
 Roberti; Terram Alanni filij Wulstan in Bede-
 feld; VII. solidatas quas tenet Wulmer Presby-
 ter de Codenbam; Decimam Hunfridi filij Vnui.
 Decimam Radulfi Grosi de Grotinges. XII.
 solid. de Aquitania in Aldesen; Terram Wul-
 mari in Akesteia; Et, præter hæc supradicta,
 concedo eis quod Decima eorum de Donewico
 crescat quoque anno in denar. & hareng. &
 in omnibus alijs rebus secundum hoc quod red-
 ditus mei ibidem crescent. Teste Nig. Eliensi
 Episcopo, & Roger. Cancellar. Henrico nepote
 Regis Stephani; Galer. Com. de Mell. Roberto
 filio Ricb. Will. Marc. Adam De Beln. Iohan.
 Marisc. Hubert. Demano. Iohan. filio Rob.
 Vicecom. Gaufrid fil. VValt. V Vill. fil. Rog.
 Heru. de Glaull. Ricb. de Alene. Roger de
 Hofa. Anno ab Incarnatione Domini M. C.
 XXXVII. apud EIA secundo Anno regni
 mei, in tempore Ebrardi Episcopi Norwicensis,
 & Gaufroni Prioris Eie. Ipse Rex subscripsit.
 Eustachius filius eius subscripsit. Matildis Re-
 gina subscripsit. VVillelmus Cantuariensis Ar-
 chiepiscopus subscripsit. Tostanus Eboracensis
 X x 3 Archi-

Archiepiscopus subscripsit. *Alexander Lincoln.*
 Episcopus subscripsit. *Henricus Winton* Episco-
 pus subscripsit. *Iohannes Rossensis* Episcopus
 subscripsit. *Eurardus Norwicensis* Episcopus
Simo Wigornens. Episcopo subscripserunt. *Rot-*
bert. Herefordens. Episcopus & *Robert. Ba-*
donens. Episcopus, & *Gislebertus Londonens.*
 Episcopus subscripserunt. Quicunque aliquid
 de his quæ in hac Carta continentur auferre aut
 minuere, aut disturbare scienter voluerint, auto-
 ritate Domini omnipotentis Patris & Filij &
 Spiritus Sancti & Sanctorum Apostolorum &
 omnium Sanctorum sit excommunicatus, Ana-
 thematizatus, & a consortio Domini & limini-
 bus Sanctæ Ecclesiæ sequestratus donec resipis-
 cat & Regiæ potestati XXX. libras auri per-
 soluat : Fiat. Fiat. Fiat: Amen. Amen. Amen.
 It is the fairest hand and largest Charter that
 euer I saw of that age, and the Scale is yet hang-
 ing to it. And in a Roll * of the Benefactors of
 that Monasterie, verie manie are mentioned for
 their Donors of Tithes, or two parts, or third
 parts, of diuers Mannors.

* In Biblioth.
 Cotton.

*Out of the Carte antiquæ among the Records
 of the Tower of London.*

When King *Henrie* the second, and Pope *A-*
lexander the third, dissolued * the number of the
 Nunnes of *Ambresburie* in *Wiltshire* (by reason
 of their vnchastitie) and filld the Nunnerie with

* Vide C. 6. 7. &
 R. 1. & 2. &
 part. 1. C. 17. 1.
Iohannis, membr. 30.
 chart. 117.

others

Chap. II.

others out of those of Font-Euerard in Nor-
mandie, diuers Churches and Parishes were an-
next, by Grant and Confirmation, to the new
Companie, and also Tithes seuerally, as *Decima*
de Forteshiria, & *de Wadhulla* &c. & *Mane-*
rium de Etona cum Decima de domino & *medic-*
tate Decima rusticorum, & *Manerium de Chel-*
stamstona, cum Decima eiusdem Manerij &c. &
Decimam de Ingafelot & *de Godingeflot, cum*
omni iure Parochiali & *Decima de Hamsteda,*
cum omni iure Parochiali, and diuers other such.

Henrie the second grants and confirms to
the Monks ^b of Thetford in Norfolk, *Decimam* ^{b G.G.1. & 2.}
de Bradleia, *Decimam de Offitona*, *Decimam de*
Florendona, *Decimam de Moledona*, and manie
other such, without mention of Churches or
Chappels with them; yet in the same Charter,
diuers Churches of other places are by them
selues conueyed or confirmed.

William the first giues to the Church of West-
minster, *Decimam de Wic de eadem parte que ad*
me pertinebat atque iterum reddidi eandem par-
tem eis iniuste ablatam quam R. Edwardus antea
dederat. Then seuerally follows diuers Appro-
priations of Churches. This was in the second
of his raigne.

Henrie the second gives to the Church of
Sarum ³ diuers Churches with Tithes, and a-
mong them, *Ecclesiam de Durnesforda cum terris*
& *Decimis quas Walterus filius Richardi* &
Isabella

Isabella de Toeni & reliqui aduocati eiusdem
Ecclesie ei dederunt. & omnes Decimas & de
Nova Foresta, & de Panctot, & de Bucholt,
& de Andeura, & de Husburna, & omnibus
Forestis meis de Wiltshire & de Dorseta, & de
Berkshire, de omnibus rebus scilicet de firma, de
Pasnagio, de Herbagio, de Vacciis, de Caseis, de
Porcis, de equabus & omnes Decimas de omni Ve-
natione predictarum Forestarum excepta Decima
illius Venationis quae capta fuerit cum stabiliis in
Foresta de Windleshora &c. *Wihac* the Bishop
had yeerly, by reason of this Grant, may be seen
in Rot. Claus. 5. Hen. 3. Membran. 14. And for
Grants from the Kings of the Tithe of Venison,
other examples are obvious, as of the Forests of
Essex to the Bishop of London, by King Iohn,
and of others anciently, of the Tithe of the
Venison taken in the Forests in Northampton-
shire, to the Abbot of Bury, to omit that of
Henrie the first, his Grant of the Tithe of all his
Venison taken in Yorkeshire, to the Abbot of
York, which occurs in the Bire of the Forest
of Pickering.

e Rot. Claus. 4.
Ioh. R. ob. 109.
memb. 11. & rot.
Rot. 11. Hen. 3.
part. 1. memb. 5.
f. Claus. 4. Hen. 3.
part. 1. memb. 2. &
Claus. 17. Hen. 3.
membran. 4. & 9.

g Fleetwood in
Commentar. de
iure Forestarum.

h Cor. antiq.
ff. 2.

In a Charter of Henrie the first, many Tithes
are granted and confirmed to the Priorie of
Mountague^h in Somersetshire, as *Dua partes*
Decimarum de Arford, *Decima de Crimoc*, &
medietas Decimarum de Giselberg, de Clafford,
de Northoniuxa Tannton, & *Decime domini*
de Merston, & de Herecumb, de Candell, de
Torp,

Torp, de Cernel, item de Cernel, & de Cernel
Cernel &c.

Henrie the first graunted ¹ to the Canons of ¹ R. m. 8. 11.
Cambridge, Decimas de dominio meo de Cantebri-
gia & Ecclesiam S. Egidij &c.

About 3. Hen. I. Manasser Arfo ² renewed his ² k. s. 2.
Charter to the Abbey of *Fisebamp* in *Norman-*
die, and gaue them *apud Sobrinton de suo domi-*
nio duas garbas Decime sue, and so in diuers o-
ther Mannors. *Dedit & Decimas de cunctis de-*
narijs suis & de pulvis equarum suarum, de Vitu-
lis, de Ouibus, de Caseis, de Lana & Decimas de
omnibus rebus suis, & Decimas de omnibus homi-
nibus supradictarum villarum. All which, was
confirmed by the King. It seemes, that in *De-*
cimas de omnibus rebus the Corne was excep-
ted, according to the first Limitation of his
Grant.

II. To these might he added more out of the
Rolls ¹ especially of Exemplifications or Con-
firmations. But the store is large that is alrea-
die deliuered. And to conclude it, obserue this
most notable testimonie in a Writ of the Register
and in *Fitzherbert*, that had reference to the
common vse of those arbitrarie Grants out of
demesne Lands at the owners pleasure, without
vnderstanding of which vse, I shall doubt no man
thoroughly vnderstands the Writ, nor the true
ground of any Writ *de aduocatione Decimarum*.
It is a singular example, and, as I remember, not

¹ Vide Rot. cart. 3.
R. Joh. ann. 2.
cart. 61. & Cart.
antiq. V. & 8. p.
& in Pastoral
cart. antiq. ann. 80.
&c.

in Reg. Wig.
fol. 36. A. & B.
N. B. 4. 20.

seconded or specially noted elsewhere in our
Law books ; and therefore I transcribe it whole,
“ Rex. In tali Iudici salutem. Monstravit nobis
“ venerabilis Pater H. *Lincolniensis* Episcopus
“ quod cum I. præcentor Ecclesiæ Beate *Maria*
“ *Lincoln.* teneat de dono suo omnes Decimas
“ Dominicarum terrarum suarum vel Dominici
“ sui de N. quas idem Episcopus & prædecesso-
“ res sui Episcopi loci prædicti liberè conferre
“ consueverunt : Prior Beate *Katharine* extra
“ *Lincoln.* clamans Decimas illas pertinere ad
“ Ecclesiam suam de B. trahit eum inde in pla-
“ citum &c. Et quia placitum prædictum tan-
“ git Coronam & dignitatem nostram ; præser-
“ tim cum collatio earundem Decimarum ad
“ nos possit deuolui ratione custodiæ vel Esca-
“ etæ, quia etiam consimiles Decimas conferi-
“ mus in quibusdam Dominicis, & similiter
“ quamplures magnates regni nostri in Domi-
“ nicis suis, vobis prohibemus ne placitum il-
“ lud teneatis in Curia Christianitatis, nec ali-
“ quid quod in derogationem Regiæ dignitatis
“ nostræ cedere valeat, in hac parte attentetis
“ seu per alios attentari faciatis quouismodo.
“ Teste &c. What can the intent of this be o-
ther, then that the Bishop, the King, and manie
other Grandes of the Kingdome, did vsually
grant or collate the Tithes of their Demesnes ;
which, because they were so grantable at the
owners will, were (by the meaning of this VVrit)
exempted

exempted from the Spirituall Iurisdiction. But thereof more anon. Perhaps the Writ is immediately to be vnderstood of Tithes collated in like sort as a Church; so that he which collated them, had *aduocationem Decimarum* (which appears also in the *Register*) as any other conferring a Church, had *Ecclesie aduocationem*. If not so; whence could the collation of these Tithes haue originall, sauing only from the making them seuerally a kind of Benefice (vnder the name of *Decime sepe rate*, that is, annexed to no Church, as the Marginall note in the *Register* well calls them) by arbitrarie Grant at first of the owner, no otherwise then a Church was made a Benefice to be bestowd, by the arbitrarie Ordinance of the Patron, at the foundation? Cleerly, had not the vse of conueyance of Tithes seuerally by Grant, preceded in practice, it could not haue been, that *Quamplures magnate regni* (as the Writ sayes) might *Decimas libere conferre in dominicis suis*. Tithes alone could neuer haue been collated like a Benefice, had they not been first founded or created as a Benefice. And the Writ might seeme indeed to beare even the character of the time wherein that vse of arbitrarie Grants of Tithes was known, as of common practice; which I vnderstand to be about King Iohns time; and that, before the Popes Decretalls, or other autoritie, had taken away the Lay-mens challenged libertie of granting Tithes seuerally,

according to the former example. And the rather might that coniecture hold, because also the Sigle expressing the Bishops name, is H. which by all likelyhood denotes *Hugh* Archdeacon of *Wells*, being L. Chancellor to King *John*, and Bishop of *Lincolne*. But it may be also, that it was had of later time, and at the suit of *Henric* of *Lexinton*, made Bishop of *Lincolne* in 38. Hen. 3. and that, after Parochiall right was more settled. For notwithstanding the settling of it, and making Tithes then payable *de iure communi* to the Parish-Rector, yet it is certaine, that the former Grants (what through generall Confirmations from *Rome*, what through the Lay mens standing vpon their Patronages of Tithes, and vpon the Grantees acknowledgement of their first deuotions in such Consecrations) still continued, and were subiect (in case the *Aduocatio Decimarum* might come in question) to such a Prohibition, vntill some alteration was therein made, as anon shall be shewed, where wee speake of the ancient vse of the Writ of *Indicauit*. But of what time soeuer the Writ was, it is plain, that the ground of it must come from that vse of arbitrarie Consecrations of Tithes, which seuerally also (as in it is supposed) made sometimes a kind of Benefices that might be collated at the will of those who were owners of the Land whence the Tithes were payable. How could Tithes seuerally be collated by any Grandes, but from such originall

nal examples as are already copiously deliue-
red? A like precedent of a prohibition I have
seen 7. Ed. 1. which because it so confirms the
ancient purpose of that in the Register, shall be
here at large deliuered. *Edwardus &c. Archi-
diacono Wilteshyr. & eius Commissarijs salutem.
Cum dilecti nobis in Christo Abbas & Conuentus
de Osney ex collatione progenitorum nostrorum Re-
gum Anglia percipiant & percipi debeant, & ipsi
& predecessores a tempore collationis illius semper
hucusque percipere consueuerint duas partes Deci-
me garbarum prouenientium de dominicis terris
Edmundi Comitis Cornubiæ in Harewell, &
quorundam tenentium suorum eiusdem ville in sub-
ventionem sustentationis Capellanorum & Cle-
ricorum in libera Capella nostra S. Georgij in
Castro nostro Oxoniæ ministrantium, Rogerus
de Draytona Persona Ecclesie predictæ ville
de Harewell, clamans predictas duas partes ad
eandem Ecclesiam suam pertinere trahit ipsos
Abbatem, & Conuentum inde in placitum coram
vobis in Curia Christianitatis, sicut ex relatu plu-
rium accepimus. Quia verò predictum placitum
tangit nos & Coronam nostram & dignitatem,
maximè cum communes decimas in pluribus Do-
minicis nostris conferamus, & etiam plures Magna-
tes regni nostri communes decimas, quarum collatio
ad nos ratione custodie deuolui solet, similiter confe-
rant in Dominicis suis, & etiam quia cognitio su-
per iure patronatus huiusmodi Decimarum ad Cu-
riam*

In Castro Ma-
Cambridge Osney
in Bibl. Cotton

o Pat. 16. Hen. 3.
m. 17.

p Roger. de Hou-
den. part. 3. fol.
460. b.
q Vide extr. tit.
de Prob. s. in Laro-
raneo. s. 11 & tit.
de primis. s. 3.
cum & plantare.
& in Concill ip-
so quod. plenē
eantimodo ex-
tat in editione
Romana & postre-
ma Bingj.

r Extr. tit. de lē
qua sunt a Pral.
s. q. cum Apostolica

riam nostram pertinet; tibi vel vobis prohibemus ne
placitum illud teneatis in Curia Christianitatis. T.
meipso apud Wodestoke Octavo die Febr. anno
regni nostri septimo. Here is plainly vnderstood
whole Benefices of only Tithes, to be collated
by the King and divers of his Baronage. as the
Tithes of the Kings Garden in *Windsore* are in
o record, collated by *Henrie* the third; and other
like sometimes occur. Neither is that Canon of
the Councell of *Westminster* held vnder *Hubert*
Archbishop of *Canterburie*, in 2. *Iohan. R.* from
any other originall to be interpreted, then from
those common conueiances and grants of Tithes
and Church linings generally by Lay men to
Monasteries. The words are, *P Lateranensis*
Concilij tenore perpensis decernim' ne fratres Tem-
pli, vel Hospitalis, siue quicunque alij religiosi Ec-
clesias vel decimas, vel alia beneficia Ecclesiastica,
siue Episcopali autoritate de manu Laica recipiant,
dimissis etiam quas contra tenorem istam moderno
tempore receperant &c. For however, that in the
Councell of *Lateran*, be interpreted (I enquire
not how well) of Tithes only infeodated into
Lay hands; yet in this Kingdom, where those in-
feodations were not, or were very rare (whereof
anon more) how can it be well vnderstood but
of new Grants or arbitrarie Consecrations of
Tithes as well not before in esse, as of others con-
ueid by Inuestiture of Churches. But touching
those conueiances of Tithes by Lay men, see
more

more in the XIII. Chapter where we speake of
Infeodations.

III. Out of those examples of Conueiances
and arbitrarie Consecrations of Tithes (being
but a few, and as an essay only of the multitude
of them, which might be found in the Lieger
books of other Monasteries) may easily be colle-
cted, the truth of those assertions in the old yeer
books, which haue, without desert, been taken
for falshoods grounded only vpon ignorance.
By the practised Law, cleerly euery man gaue the
perpetuall right of his Tithes to what Church he
would, although the Canon Law were against it;
whereof also notice, it seems, is sometimes taken
in those conueiances which haue the words of
Que decimari debent, as if they had said, Tithes of
all things which by the Canon Law ought to be
tithed, or, *Que decimari debent more Catholico*,
as the words are in a Charter of about Henrie
the seconds time, of Gilbert one of the Earles of
Hertford, to the Priorie of S. Marie Ouerie in
Southwark of the Tithes of Capesfeld. And it is
like enough, that according to the recitalls of
those Decretalls noted in the former Chapter,
in some places deuotion had bred an obedience
to the Canons in this point; but, that it was ge-
nerall through the Kingdome, is most false. and
whateuer the Pope wrote from Rome; we know
the truth by a cloud of home-bred witnesses. But
also those words, *Decimari debent* (or *solent*, so
often

b To Armes
Catholico.

often occurring, may be vnderstood of such things as vsed to be tithed when Tithes were arbitrarily paid, as among the Gentiles, or Christians, he that offers *de ijs que offerri solent*, intimates not so much any necessarie dutie acknowledged by him, as a custome of offering such things, when offerings were arbitrarily made. And although in the book of *Domesday* it be specially found of one *Stori* an ancestor of *Walser* of *Aincurt*, that he might *sine alicuius licentia facere Ecclesiam* (in *Darby* and *Notinghamshire*) in *sua terra* & in *sua foca*, & *suam decimam mittere quo vellet*, as if it had been his singular prerogative, in his possessions of *Graneby*, *Mortune*, *Pinnesleg*, and other Mannors; yet was that libertie or prerogative aswell of building Churches as arbitrarie conueiance of Tithes not alreadie consecrated either by deed or prescription, common, it seems, to all Lords of Mannors or large Territories, vntill about the time of *K. Iohn*. For that of Tithes; the examples and authorities before cited iustifie it. For the building of Churches (which considered with the arbitrarie endowments of them with new Tithes, specially belongs also to this disquisition) it was affirmed for a common libertie of the Baronage in letters of *King Iohn* to *Innocent* the third, as you may see in the Popes answer to the King. *Quod enim de consuetudine regni Anglorum* (saies the Pope to him) *procedere regia serenitas per suas li-*
seras

¶ Innocent. 3. B.
 p. 2. Decretal. lib. 1.
 pag. 228.

terat intimavit, ut licet tam Episcopis quam Ceteris & Baronibus Ecclesias in feudo suo fundare, Laicis quidem Principibus id licere nullatenus denegamus, dummodo Diocesani Episcopi eis suffragetur assensus, & per novam structuram veterum Ecclesiarum iustitia non ledatur. It was challenged without licence; but the Pope allows it to the Laitie, so that they had licence from the Bishop of the Diocese, and withall that the new foundations bereaved not ancient Churches of their assigned endowments. But after the time of K. Iohn, few or none of those arbitrarie consecrations are found. yet in Henry the thirds time some were, as you may see in those of Fines taken out of the Chartularie of Gibern. but remember also they were in the Province of Yorke. Neither were those Grants disallowd by either Common or Canon Law here then practiced. and in those cases of Tithes that occur among the Epistles of Iohn of Salisbury, who lived in time of Henry the second, no title is made meerly by Parochiall right; but Prescription or Consecration are the grounds whereupon they are demanded: and whereas in the case of Robert Wnegot before Adelelm Archdeacon of Dorchester, the question was there, *super quibusdam Parochianis & Decimis*, and the Actor produced testimonie that he had formerly recovered *iure Parochiale quod petebat cum decimis*; it is cleer that the Tithes were not recovered *iure communi*

as they are at this day belonging to the Parish-
 Rector, but by speciall title of Consecration or
 Prescription. and the *iur Parochiale* there, was
 the right of hauing the Cure and Offerings of
 the Parishioners, which had not necessarily an-
 next to it the right of Tithes by the practice of
 that time. whence it came that *Parochiani* &
Decime are both there mentioned as seuerall
 demands in the Actors Libell. and hereof see
 more anon in the corollarie of the ancient Iuris-
 diction of Tithes in *England*. and that admoni-
 tion of *Theobald* Archbishop of *Canterbury*
 (before cited) to *Ala* Countesse of *Warren*, is
 obseruable. is it not apparant that he allows not
 only the arbitrarie Consecrations made by the
 Earles, but also reprehends her sharply for not
 performing what they had therein vowed? But in
 the ensuing times, after that the Canon Law had
 here gained greater strength, which happend
 soon vpon *Innocent* the third his thundering out
 his Interdict against this Kingdom, his Excom-
 munication against the King, and frightening the
 subiects with his Bulls stufft with commination,
 and that against this very point of arbitrarie
 conueiances of Tithes; it soon came to be a re-
 ceiued Law, that all Lands regularly were to pay
 Tithes to the Parish or Mother Church accor-
 ding to the prouision of the Canons. and there-
 fore vpon Delegation made by Pope *Innocent*
 the fourth in 49. *Hen. 3.* to the Priors of *S. Tri-*

nitie,

Chap. II.

nitie, and S. Baribolamew in London; and the Archdeacon of Westminster for the deciding of a controuersie twixt the Abbess and Nunnes of Chattrie by Ely, and Robert Passelew Archdeacon of Lewes, about some Tithes of the possession of the Nunnerie in Barington, it appears that in Passelew's libell, no other title is made, but that the Land lies *infra limites Parochia sue de Barenton, vnde petit dictam Abbatissam compelli integrè ad solutionem dictarum decimarum cum damnis & interesse &c.* and some others like are of that time according to the Law that to this day continges, as may especially be found in the books of a Pipewell and Osney. That example is in the Chartularie of that Nunnerie, composed by the cost and pains of Agnes Aschefeld Abbess there, and Henry Bukworth Bachiler of the Canon Law, about the time of Henry the six. You may adde to the confirmation of this ending of the ancients course of arbitrarie consecrations, and the later establishing of Parochiall right in Tithes, that of the English * Monks before cited touching the generall Councell of Lions, held in a Ed. 1. I doubt not but that Parochiall right was long before for the most part settled; but it is not likely that they had so confidently affirmed such a continuing libertie of conueiance of Tithes at the owners will, had they not known that vntill about the preceding ages at least, it had been in common practice both

in Tithes, vnde petit dictam Abbatissam compelli integrè ad solutionem dictarum decimarum cum damnis & interesse &c.

in Mils Bishops Catechism.

* Sup. cap. 7. §. 1.

2. *Inter fustic. 200.*
Paul. 6. 6. 1. in ore
London.

both of fact and positive Law, especially in this Kingdom where they lived. Whether this petition in Parliament of 6. Ed. 1. may give any light to that assertion of theirs, I know not. Nicholas of Crainford, Parson of Gillingham, complained to the King, Quod cum Foresta Domini Regis, ibidem sita, sit infra Parochiam suam, quod Dominus Rex Decimam fani, venationis, pannagi, & aliorum proventuum ipsius foreste de gratia & pro salute animæ suæ, & animarum prædecessorum suorum, Ecclesiæ suæ cui de iure communis debentur plene solvi precipiat, secundum formam supplicationis & exhortationis Apostolicæ porrectam Domino R. apud Gillingham quando fuit ibi ad Natale. What was that *supplicatio* or *exhortatio Apostolica*? did not some such thing, coming from Rome about the time of the Councell of Lyons, make the Monks think it a thing agreed vpon in that Councell? it seems here too, that in the Kings case, Parochiall right of Tithes was not yet euery where settled, although the Tithes were encreasing in a Parish.

IV. After this establishment of Parochiall right, new arbitrarie conueiances out of lands lying in any Parish, were not permitted, but ancient consecrations were still retained, and had confirmation either from prescription or Papall privilege which were, by the Canons, sufficient titles to be pleaded against the common right claimed

claimed by Parish Rectors. And when this innovation grew in Parochiall right, then also the jurisdiction which the common or secular Law had formerly challenged and exercised in determining the right of Tithes (between the Parish and Parishioner) grew out of vse; and the legall proceeding became to be regularly according to the Canon which brought the practice to be as since it hath continued. But of the ancient jurisdiction more anon. So was it now come to that passe, that no new arbitrarie consecrations might be made of the Tithes of lands lying in any Parish. But yet for such lands as were not Parochially limited, the ancient libertie was retained: and although by the Canon Law the Bishop is to haue all Tithes growing in lands not assigned to any Parish within his Diocese, yet in the monuments of the common Laws such Tithes growing in lands of the Crown, are at the arbitrarie disposition of the King. such places haue been and (I think) are in diuers Forests. And hereof saies *Tibory* in 32. *Assis. pl. 73.* *Il seient estre les loys quans il auer certaine place qui suit hors de chescun Paroche come en Englewode, & huiusmodi, en tel case le Roy ad & doit auer les dismes de cest place (& moult Euesque de lieu) a grant a que luy plest.* and relates further that the Archbishop that yee made suite to the Councell, to haue had such Tithes. But, vnder fauor this was vnderstood only of the Kings granting the tithes

7 *Extr. de. & Decretis* 2. 13. *quoniam*

14. *Ilm. 4. fol. 17. b. & 20. fol. 10.*

of his Demesnes occupied by his Bailifes according as in ancient time euery man els did: for whatener the words seeme to import, *Thorp* speaks only of such lands of the possession of the Crown; in which case; it must not perhaps be vnderstood so much, a part of the Royall prerogative as a right due to the King by common Law, in regard of his possession of lands not limited to any Parish. Neither doth he affirm that Tithes of such places are due to be paid to the Crown, but that they are in the King to grant at his pleasure, if growing in his demesnes. But to this purpose is a notable case in the Parliament rolls of * 18. Ed. I. where *Ralph Bishop of Carlisle Petitiit versus Ecclesie Priorem de Karliel Decimas duarum placearum terre*, of the new assarts in the Forest of *Inglewood*, whereof the one is called *Lintbwait*, the other *Kirkbwait*, *Quasunt infra limites Parochie Ecclesie sue de Asparterike &c.* and laies by prescription in his predecessors the Tithes of the pannage there, before the assarting or culture. *Henric of Burton* also, Parson of *Thoresby*, claimed in Parliament the same Tithes as belonging to his Church, and *infra limites Parochie sue*. and the Prior comes & saies, that *Henric Rex vetus* (*Henric the first*, it seems) *concessit Deo & Ecclesie sue Beata Maria Karliel omnes Decimas de omnibus terris quas in culturam redigeret infra Forestam*, & inde eos seofaunt per quoddam cornu eburneum quod dedit Ec.

* In Receipt.
Secretary, & in
Col. Vol. apud V.
C. I. Borough re-
gionum in area
Land. Sermonum
pro ditione.

10. Vol. 11.
10. Vol. 11.
10. Vol. 11.

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Ecclesia sua predicta &c. Whereupon the
 Kings Attorney, *Dicit quod Decime predictae*
pertinent ad Regem & non ad alium quia sunt
infra bundas Forestae de Inglewood, & quod Rex
in Foresta sua predicta potest villas edificare, Ec-
clesias construere, terras assartare, & Ecclesias il-
las cum Decimis terrarum illarum pro voluntate
sua cuiusque voluerit conferre, & quod Foresta
illa non est infra Limites alicuius Parochiae &c.
Et petit quod Decime illae Domino Regi remane-
ant prout debent ratione predicta &c. Et
 quia Dominus Rex super praemissis vult certiorari,
 ut unicuique tribuatur quod suum est. William
 of Wesei, Iustice of the Forest beyond Trent, and
 Thomas of Normantull, his Escheator for those
 parts (for so was the diuision anciently of Es-
 cheatorships) were assigned Commissioners to
 enquire of the truth, & certifyent Regem ad
 proximum Parlamentum &c. So are the words
 of the Record. Where the Attorney challenges
 not the right by prerogative, but only in regard
 that the place being the demesne Land of the
 Crowne; & not assigned to any Parish, the Tithes
 are grantable by the King, as owner, at his plea-
 sure. And so it well agrees both with that liberty
 challenged by King Iohn in the name of his Ba-
 ronage, that they might found new Churches at
 their pleasure in their owne fees (before the esta-
 blishment of Parochiall right in Tithes) as also
 with the more ancient practice of the Kingdom;
 whereby

whereby Tithes might not be parochially exacted, nor were so reputed due, but by the owners arbitrarily conveyed in perpetuall right. And whereas *Herle*, in 7. *Ed. 3.* fol. 5. a. sayes generally, That no man might arbitrarily giue his Tithes that are not within Parochiall Limits, but that the Bishop of the Diocesse should haue them. It seems, he spake suddenly, as out of the Canon Law, and not according to the Law of England. And hee addes, that it is against reason, *Que bonis ne parra my granter ses almoignes a que il voudra.* And but * two yeeres before that of *Herle*, it was adiudged in the Kings Bench, *Quod de Decimis grassis Priori de Carleol & predecessibus suis de dominicis Domini Regis infra Forestam de Inglewood proueniensibus & extra quaruncunque Parochiarum Limites existentibus per Curiam progenitorum Domini Regis tunc concessis, & per Curiam ipsius D. R. nunc confirmatis, &c.* a Prohibition should be granted against the Bishop of *Carleol*, that claymed them. It was vpon a Record sent thither out of the Parliament, as in the Roll appeares largely. And *Edward* the first gaue such Tithes of the Forest of *Dene*, as encreased not within any Parish to the Bishop of *Landaff*, by which title the Bishop afterward * claymed them, and no question was of that point. But for common or waste ground, the Parish whereof is not known, the Statute of 2. *Ed. 6.* hath given the Tithe cat-

* *Mch. 5. 22.*
Coram Rege
20. 151. *Canonicis.*

* *2. Ed. 6. 1. c. 2.*
re. 17. in des.

yd 37218

tell

tell therein depasturing, to the Church within whose Parish the owner dwelleth.

C. A. P. XII. *Law, and Statutes*

Appropriations and Collations of Tithes with

I. *Churches. The Corporations to which the Appropriations were made; presented, for the most part, Vicars. Thence the most of perpetuall Vicarages.*

II. *How Churches and Tithes by Appropriation were anciently conveyed from Lay-Patrons. The use of Investitures; practised by Lay-Patrons.*

III. *Grants of Rents or Annuities by Patrons only, out of their Churches. Of the Bishops assent. More of Investitures. A Writ to the Archdeacon anciently sometime sent upon recovery of a Presentment.*

IV. *Of hereditarie succession in Churches.*

V. *Lapse upon default of Presentation grounded upon the generall Councell of Lateran, hold in 1215. Hen. 2. What Presentatio ad Ecclesiam is originally. Donatio Ecclesie.*

by Consecrations; scitally, so, with

A *Churches, in Appropriations, Tithes were frequently conveyed; and by express name: as Ecclesia de N. cum Decimis, or the like, are usually given Monachis, Monialibus*

¶ *Ec. ibidem Deo seruientibus &c.* according to what is before noted of other Countreies. But this Mention of Tithes, with Churches in Appropriations, was rare, or not at all, till after the *Normans*. In the *Saxon* times, many appropriated Churches are found, and that from between *D. C C.* and *D. C C C.* yeers since, till the *Normans*. but the Charters that conueyed or confirmed them, haue vsually nothing but *Ecclesias* and so many Carues or Yard Lands, or so much rent annex to them, nor speaking at all of any Tithes transferd with them. For speciall examples of such ancient Appropriations, you may see the recitalls of the Charters of King *Bertrulph*, King *Beored*, and King *Edred*, made to the Abbey of *Crowland*, and inserted in *Ingulphus*. But after the *Normans*, in Appropriations, most commonly, the Church is exprest, *Vna cum Decima* (that is, the Tithe annex or consecrated to it) in *annona*, or in other kind, and the places sometimes are named where the encrease of the Tithe grew. Such examples are very obuious, especially in the Chartularies of *Abingden* and *Rockester*. And, as is before noted, the most common intent (allowd also by Canonically confirmation, which sometime but rarely was added in those elder ages) was, that the Corporation whereto the Appropriation was made, should put Clerks or Vicars in the Churches so conueyed to them, which were to answer to them

for

for all temporall profits, as Tithes and other revenues (although the Churches were distant many hundred miles sometimes from the Monasteries; for a Church in one Kingdome also was often appropriated to a Monasterie of another) and to the Ordinarie for spirituall function. The generall Confirmations that are sometimes found of that time, make it manifest. and for the two Provinces, it is not amisse to adde here these two examples of it. In 17. Will. 1. Thomas Archbishop of York makes a generall Confirmation to the Priorie of Durham of all Churches either then appropriated to them, or thereafter to be appropriated, and grants and commands, *Ut omnes Ecclesias suas in manu sua teneant, & quietas eas possideant, & Vicarios suos in eis libere ponant, qui mibi & successoribus meis de cura tantum intendant animarum, ipsi vero de omnibus ceteris Eleemosynis & Beneficiis.* So, vnder Henry the second, Pope Lucius the third writes to all the Monks in the Province of Canturburie, and bids them, that in all Churches, in quibus presentationem habetis cum vacauerint Diocesani Episcopi Clericos idoneos presententis qui illis de spiritualibus, vobis de temporalibus debeant respondere. Where, that in quibus presentationem habetis, can bee vnderstood only of Churches appropriated (which they enioied not pleno iure, that is, ⁶ in which they were bound to allow some competent revenue to a Vicar or Curat,

a Reg. de Henr.
dunelm. 1. p. 124.

b. App. ad
canon. leg. p. 124.

c. App. ad
canon. leg. p. 124.

e. F. de iur. ad
tit. de iur. in
reg. sup. ant.

Curat, and had not exempt iurisdiction, nor the power of Institution of Vicars, without presentation to the Bishop: it is plainly known from what follows touching the answering for the Temporalities to the Monasteries. And in those times, as is already delivered, it was most frequent, to have presentations made by Monasteries to their appropriated Churches; and the Vicar Incumbents or Presentees had no more of the profits (notwithstanding the institution then the Monasteries would arbitrarily allow them) Neither followed any disappropriation upon such Presentation, however the later Law be taken otherwise. Nor was there any perpetuall certainty of profits or revenues to their Presentees, untill such time as the Monks, by composition with the Ordinaries, or by their owne Ordinance (which prescription after confirmed) appointed some yearly salarie in Tithes, or Glebe, or Rent, severally for the perpetuall maintenance of the Cure; which Salaries became afterward perpetuall Vicarages. And to these testimonies touching appropriated Churches in those ancient times, and presentation to them, you may also adde that a Canon of the Councell of Westminster, held in the second of King Iohn by Hubert Archbishop of Cantuarie, to the same purpose, wherewith is agreeing also one of Othobons Legatine Constitutions, touching settling of Appropriations, and making of Vicarages;

Nullus de parochia
monasterii possit
esse parochianus

Incumbens de
parochia monasterii

2 Reg. Henr.
cap. 2. fol. 60. b.

In constitutionibus
Othobonis legatine
constitutio 2. cap. 1.

1218

c. 2. s. 1.

ges;

dena tenebit quamdiu casti & religiosi vixerit. Quod si crimen incurrerit, iudicio Prioris Latifacientis corrigatur aut expellatur. This, about the time of *Henric the second*, was made *coram duobus Hundredis apud Hundestuph*. Very many others are extant so made, as well by common persons as the King in the *Saxon* times of churches, and since, of Churches and Tithes without any confirmations; saving sometimes that those of common persons are ratified by the King & as supreme Lord, as also they are too by other Lords: for it was not vnusuall for Tenants to have their Lords confirme their alienations of all kind of possessions. I know what is said in the later Law of the Kings power as suprem Ordinate for the part of Iurisdiction, and I acknowledge it, as all ought. but in those elder times, that was not the matter which made appropriations good, where his confirmation had place; and none was from the Bishop, at least it cannot at all be proved that his suprem Iurisdiction spirituall was so much thought of in them, although otherwise apparant testimonie be of the exercise of such iurisdiction & of the right of it in the elder ages in this Kingdome. But the reason of appropriations so practiced by lay Patrons only, was the challenged right which in those times they most commonly used in disposition of their Churches, as if they had been all Donatiues by collation (without presentation) that is by Inuestiture

from

*¶ Videtur 9. Ed. 1.
fol. 25. & 25. fol. 2.
Placit. de 10. Rich.
1. Rot. 22. Henr.
2. Reginaldi de
Argentea.*

Chap. 13.

Chap. 12.
from their own hands only, which gave their Incumbents reall possession of the Tithes of the Church and all the revenues; no lesse then presentation, institution, and induction doe at this day. For however, not only the Decrees both of the Pope and generall Councils, were anciently against that kind of investiture, but also the Provinciaall or Nationall Synods here held, had like Canons forbidding it, as in 3. Hen. 1. the Councell of Westminster held vnder Anselme Archbishop of Canterburie, & Girard of Yorke, ordains; *Ne Monachi Ecclesias nisi per Episcopos accipiant*, and in 25. Hen. 1. at the same place in the Nationall Synod, held by Cardinall Iohn de Crema, the Popes Legat, it was constituted; that *Nullus Abbas, nullus Prior, nullus omnino Monachus, vel Clericus Ecclesiam siue Decimam seu quolibet beneficia Ecclesiastica de dono Laici sine proprii Episcopi autoritate & assensu suscipiant quod si presumptum fuerit, irrita erit donatio huiusmodi &c.* and some allowance was given to these Canons by the King; yet it is most certain that the practice was for diuers yeers afterward otherwise, and that Churches with Tithes were most commonly giuen by lay Patrons, without the Bishops assent or institution, and that as well by filling them with Incumbents, as appropriating them to Monasteries, Chapters, or otherwise. Beside the examples that might enough proue it and are obuius in old Chatur-

k. *Rog. de Insti.*
v. 3. ex *Argum.*
qui Canon ple-
nius habetur in
Appendice ad
Concil. Lat. an.
par. 38 cap. 12.

De iure patr.
c. 10. cum *Lex.*
c. 11. cum *Patroni.*
c. 12. *Patroni.*
vide *Rog. de In-*
stit. c. 1. *Patroni.*
Patroni. lib. 7. cap.
25. & *app. ad*
Concil. Lat. par.
38 cap. 2.

1 *Th. de iure patr.*
c. 10. cum *Lex.*
c. 11. cum *Patroni.*
c. 12. *Patroni.*
vide *Rog. de In-*
stit. c. 1. *Patroni.*
Patroni. lib. 7. cap.
25. & *app. ad*
Concil. Lat. par.
38 cap. 2.

in *Epist. Anselm.*
M. 195. in *Bibl.*
Curien.

laries, the preamble of a Decretall of Alexander
the third, sent, vnder Henrie the second, to all the
Bishops of the Province of Canterbury, is
herein full testimonie. *Ex frequentibus querelis*
(laics he) didicimus in partibus vestris consuetudi-
nem pravam a multis retro actis temporibus inua-
luisse, quod Clerici Ecclesiastica beneficia sine con-
sensu Episcopi Diocesis vel Officialium suorum (qui
hoc de iure possunt) recipiunt minus quam deceat,
sollimite cogitaueris, quomodo id a Patrum sanctorum
est institutionibus alienum & Ecclesiastica contra-
rium honestati. Vnde cum tu frater &c. where you
see plainly that course of inuestiture or donation
by the Patron without presentation, was consue-
tudo quae a multis retro actis temporibus inua-
luerat, which shews it to haue been then a part of
the secular Law; though the iudgment of the
Bishops and the Pope titles it *Prava*. agreeing to
this are other testimonies in ¹ *Gregories* Decre-
talls, and that in Epistles to all the Bishops of
England to forbid it. and it is specially obserue-
able, how all the Baronage of *England* tooke it
when *Anselm* vnder Henrie the first would haue,
through Papall Canons, inhibited the practice
of inuestitures, vsed by the King and other lay
Patrons, which is recorded in an Epistle of
that *Anselm*, directed to Pope *Paschal* the se-
cond, thus speaking. *Domino Reuerendo &c*
Patris diligendo Paschali summo Pontifici
Anselmus *seruus Ecclesie Cantuariensis*, debi-
tam

et tam subiectionem & orationum assiduitatem.
 Postquam reuocatus ad Episcopatum rediit in
 Angliam; ostendi decreta Apostolica quæ in
 Romano Concilio præsens audiuit ne scilicet
 aliquis de manu Regis aut alicuius Laici Ec-
 clesiarum Inuestituras acciperet; ut pro hoc
 eius homo fieret; nec aliquis hæc transgredi-
 entem consecrare præsumeret. Quod audien-
 tes Rex & Principes eius ipsi etiam Epis-
 copi, & alij minoris ordinis tam grauitè a-
 ceperunt, ut assererent se nullo modo huic rei
 assensum præbituros; & me de regno potius,
 quam hoc seruant, expulsuros; & I. Romana
 Ecclesia se discessuros; unde reuerende Patet
 vestrum peti, per Epistolam nostram, consili-
 um &c. This is in the Ms. Volume of Epistles
 of Anselm; fairly written by John de Grandison
 Bishop of Exeter, in the year M. CCC. LXIV.
 in which are about C. more then are published
 in his printed Works. they menaced the Arch-
 bishop with banishment, and the Pope with re-
 volt from his See, only for their withstanding
 that practice of Inuestiture; whereof, for so much
 as concerns Abbeies, Priories, or Bishopricks
 (in giuing them by the ring and baston) much
 testimonie is in the storie of about that age. and
 the Kings remission of the Inuestitures of those
 great dignities is frequent. but, for Parish Chur-
 ches, of which we here chiefly speake; the com-
 mon occurrences of Inuestitures mention them

B b b

but

1 In Append. ad
Concil. Lat. part.
2. cap. 14. tit. de
electis regenda.

but litle. But for the vse of them known also by the name of Institution; see the Fine anon transcribed of 33. Hen. 2. as also specially a commission sent by Pope *Alexander* the third, to the Dean of *Chichester*, touching a Parson that was legitime institutus à *Willicelmo Nobili viro*, and had resigned *Personatum Capellano Domini*. But this course of Inuestiture by Lay men, after *Anselmes* time, began to bee of lesse vse; and some, obeying the Canons, presented, others still collated by Inuestiture till about *Richard* the first and King *Iohns* time, whereof more in the next Paragraph. To the Lay Patrons challenged right of such Inuestiture of Churches and Tithes, belongs specially the Granting of Rents and such like out of Rectories by the Patrons only, and the Sonnes or others Succession in Parish Churches after the death of their ancestors of both which (litle known vulgarly) ancient warrant is yet remayning.

III. For the first; in the Chartularie of the Priorie of *S. Needs* in *Huntingdonsbire*, one *Robert Fitz-water* (about King *Iohns* time) gives to the Priorie six marks of silver nomine certi beneficij in Ecclesia de *Wimbisse* annuatim percipiendas per manum persone eiusdem Ecclesie. Quare volo (saies he) ut quicumque in prefata Ecclesia de *Wimbis*, ad presentationem meam vel heredum meorum persona instituta fuerit prænominatus *Manebis S. Neoti* de supradicto beneficio VI. marca-

rum

rum fidelitatem faciat, salvo mihi & heredibus
meis iure advocacionis & presentationis &c. and
divers other such like are. Neither have I met
with a precedent of those times wherein the En-
cumbent was Grantor, as at this day by the Com-
mon Law (the Church being full) I think he must
but most usually a provision by the Patron was
inserted to this purpose, that the severall En-
cumbents should by Oth bind themselves to the
true payment. nor was it so necessarie to have
the ordinaries assent, when that, which theordi-
nary by the practice of the later Law is to do in
his Institution, was in frequent practice supplied
by the Patrons Investiture. Out of which may
be the better understood that part of the new Ca-
non in the Synod of Westminster, held under Ri-
chard Archbishop of Canterbury, in 23 Hen. 2.
*Nulli liceat Ecclesiam nomine Decanatus ad ali-
quem transferre*, that is, That no Patron should
give his Church, as it were in Frankmarriage, or
make of it a *Donatio propter nuptias* (as the Cui-
lians call it) to remain with the husband of his
Daughter or Kinswoman, during his life. How
could such a gift have at all been made by pre-
sentation (as of later time it is understood) Insti-
tution or Induction? and a most observable ex-
ample of this matter is in a Fine of 33 Hen. 2. in
these words: *Hæc est finalis concordia facta*
in Curia Domini Regis apud Cantuariam an-
no Regni Regis Henrici secundi XXXIII. die
Ve-

It is to be noted
that the
word *finalis*
is used in the
original.

Venetis proxima post festum sancti Iohannis
 Baptiste Coram Radulpho Archidiacono Ca-
 thedrali, & Rogero filio Rainfri, & Roberto de
 Winesfeld, & Mabile de Bala Iusticiarijs Domini
 Regis, & alijs fidelibus Domini Regis ibi-
 dem tunc presentibus inter Priorem de Leves
 & Monachis eiusdem loci & Willielmum fi-
 lium Arthuri, quem Richardus de Badegintun
 posuit loco suo ad lucrandum vel perdendum
 de aduocatione Ecclesie de Budekeram, vnde
 placitum erat inter eos in Curia Regis, scilicet
 quod Prior & Monachi remiserunt & quicquid
 clamauerunt eidem Richardo & heredibus suis
 aduocationem predictae Ecclesie per ita quod
 persona que per ipsum Richardum vel here-
 des eius in eadem Ecclesia institueretur, reddet
 singulis annis Ecclesie de Leves III. solidos
 scilicet ad festum Sancti Michaelis. & ille qui
 in eadem Ecclesia per ipsum Richardum vel
 heredes suos institueretur persona, post institu-
 tionem suam, coram Episcopo fidelitatem
 prestabit quod predictam pensionem predi-
 cto termino Ecclesie de Leves persoluet, &
 postea in Capitulo de Leves eandem fidelita-
 tem renouabit. Here it appears (it seems)
 by the judgement of the Kings Iustices, that the
 Patron had such interest in those times, that he
 might alone without grant of the Encumbent
 (who came in by his Institution and Inuassure)
 or confirmation of the Bishop, charge the church
 with

with a pension: and this, being in a Fine, is of
 autoritie beyond exception for the sake. But the
 like is in *Ret. Fin. 7. Ric. 1. Hen. 1.* in a Fine
 made between *Theobald Fitz. Walter*, demandant
 in a Writ of Right of Adulowson against the
 Abbot of *Shrewsbury*, of the Church of *Kirk-*
ham, where *X. li.* mark Rent is reserved to the
 Abbot, with a like clause for the Ecclesiastical
 sealie for true payment: the like in *Fin. 4. Ric. 1.*
Comit. North. touching the Church of *Dalb-*
worth. yet also, in a fine, the assent of the Par-
 son and Bishop was sometime had, as in *Ret. Fin.*
7. Ric. 1. Staff. where, vpon Right of Adulowson
 by the Prior and Canons of *Stanes* against *Alice*
Hopton, for the Church of *Chekelegh*, *Alice* & *Ro-*
bertus filius & heredes sui per assensum & volun-
tatem H. Conuincensis Episcopi in cuius Diocesi
Ecclia illa sita est, & Oibertii personae eiusdem
Ecclie tunc ibidem presentium, concesserunt. prae-
sentis Priori & Canonis X. li. de eadem Ecclia
de Chekelegh annuatim percipiendas sine omnibus
traditionibus imperpetuum de Clericis eandem Eccliam
non possidentibus quicunque illi fuerint ad duos terminos
per annum videlicet ad Pascha & ad festum S. Mi-
chaelis X. s. Here the assent of the Parson and
 Bishop being both present in Court, is inserted
 in the Fine: yet enough examples shew that it
 was not (as may be strongly concluded) thought
 altogether necessarie. But indeed howener the
 right of Inuestiture had been then much exer-

cised by Lay Patrons, yet in case of Clergie Patrons, if the Church were not of exempted jurisdiction, the Bishops more usually instituted: and therefore was their assent the sooner admitted sometimes into the Fine; and doubtlesse also some lay Patrons willing enough herein to obey the Canons, after *Anselm* and perhaps before arbitrarily filled their Churches by presentation to the Bishop. this may be collected especially out of that of the grant of the privilege of Institution in Churches, made by *Turstan* Archbishop of *York* vnder *Henric* the first, to the Archdeacon of *Richemond*, as also out of two Decretalls from *Rome*, sent by Pope *Lucius* the third, vnder *Henric* the second to the Bishop of *Norwich* and in some other authorities both in our year books and in the fine Rolls also of the beginning of King *John*, the Bishops assent in such grants of that time is sometimes found. and in that commonly (but without sufficient ground) attributed to *Randel* of *Glauvill* chief Iustice of *England* to *Henric* the second, the Bishops institution is spoken of as a thing of not unknown right vpon a reuerie in *Darrein* presentment, according as the Canons require. And in an Epistle of *Giraldus Cambrensis* (written in those times to *Hugh* Bishop of *Lincoln* about his Parsonage of *Cestreton*, which he challenged vpon presentation of himself made by *Gerard* of *Camvill*, a Gentleman of great worth in *Lincolnshire*) the

1 *Extr. de Infit.*
a. 6. *non vniuers.*
Edm. Gregoriana.

in *Extr. de Infit.*
a. 11. *non*
a. 11. *de iure patr.*
a. 11. *de iure patr.*
in 11. *Ed. 1. 11.*
Annalis 11. 11.
Rot. Fin. 1. 11.
Henricus 11.

o *Lib. 1. cap. 10.*

p *De Symbol. flo.*
Henric 11. in 11.
Canon.

the

the

the Bishops Institution is Spoken of, as cleerly
 necessarie, according to the Canons, and noted
 with *Episcopus solus bonorum daret potest*; which,
 you must remember, was written by one that was
 feruent for the Canons, and had also written a-
 gainst the *contra consuetudines* or common Laws
 of that time. But these testimonies must be wa-
 rily vnderstood, and compared with the former
 and frequent practice of the contrarie, which a-
 bout that time, especially vnder Richard the first
 and King John (it seems) much altered. Neither
 till about that time can it be found, that the
 more common practice of Lay mens Inuesti-
 tures ceased. Nor was the Bishops Institution
 presently and vniformely thence vsed, as of later
 ages. The autoritie of the Clergie had by that
 time taken away the vse of Lay mens Inuestitures.
 Yet was it not cleere, it seemes, vpon the practice
 that here followed, what dignitie of the Clergie
 should then exercise the Institution; for you shall
 find it sometimes done by the Archdeacon, as it
 was also before K. John, in some cases where any
 Lay man omitted his Inuestiture; as may be ga-
 thered out of a Decretall, sent 1. hither from
 Pope Alexander the third, to forbid the Arch-
 deacon of Ely, *Curam animarum sine mandato*
Episcopi committere. And afterward also, in
Paseh. & Trin. 9. & 10. Reg. Iob. a Writ is a-
 warded to the Archdeacon, as now it ought to
 the Bishop, vpon recouerie of a Presentment.
 The

The fourth is this *Recordum* of per G. filius Petri & Simonem de Pauhuill quod Simon filius Richardi tempore Regis Richardi recuperavit, coram eis & fecit iurum versus Iohannem de Kalcero *seisnam* Advocatum Ecclesie de Buckworth (in Huntingdonshire) per ipsam de vltima presentatione, ita quod habuit breue quod Archidiaconus admitteret personam ad Ecclesiam illam ad presentationem eandem; & ipse Iohannes impedivit eum ita quod implacuit cum per breue Papa, & Dominus Rex prohibuit placitum, & Simon venit & impetravit a Rege quod loquela procederet, & quod haberet breue ab Archidiacono de Clerico suo admittendo & habuit. T. domino G. filio Petri & Will. de Birwere. Here twice was the Writ of Admission or Institution sent to the Archdeacon, not to the Bishop. Perhaps indeed it happened in the vacancy of the See: for the time so falls, that we cannot be sure of the contrary. But admit it were so. Plainly, the Archdeacon neither by Canon nor common Law had any more right of Institution, by reason of a Vacancie of the Bishopricke. And certainly, during the vacancie, the Writ should goe to the Guardians of the Spiritualitie, which by the Canon Laws, are the Deane and Chapter, but by the Law of England, the Archbishopps in their severall Provinces, and the Deanes and Chapters only, in case where the Archbishopricks are void. And in other places, somewhat after

afterward also I have seen Institutions often by the Archdeacon of *Lincoln*, while the Bishopricke of *Lincoln* was void; which shewes, that those times were the infancie of the exact courts of Episcopall Institutions, as they are at this day vsed. Neither had these any priuiledge of Institution, as the Archdeacon of *Richmond* had anciently giuen to him, or the like. At this day, and from long time before, the Archdeacon only Inducts, as the Books & common practice shew. But thereof thus much by the way.

IV. For that other, of Succession in the Benefices of the Ancestors; doubtlesse, that was, often when the father or other ancestor was Incumbent and Patron, and by that challenged right, of the time, of Investiture and sole disposition of the Church, would either in his life time convey the Benefice to his sonne or heire by grant, which by the practice of the time, supplied, it seemes, as well a Resignation, as Presentation, Institution, and Indultion; or would leave the Admowson to descend to his heire, that he (being in Orders) might retain the Church in his owne hands, according as the Law then, is seeme, permitted. Against this, was a Canon made in the Nationall Synod at Westminster in 3. Hen. 1. *Velly Presbyterorum non sine heredes Ecclesiarum Patrum suorum.* And another in 25. Hen. 1. held under the Popes Legat. *Sanctum* (as the words are) *ne quis Ecclesiam sibi sine Prebendam patris vendiderit*

¶ Videlicet
sit de iure Patron.
c. 15. consuet. &c.
& 10. de filijs
Presbyt. postm. &
ut, de Palli c. 5.
acceptimus. & tit.
de Testat. c. 7. cu
parte. & Append.
Conell. Lat. part. 8.
cap. 23. Hereford.
Episcopo & Ab-
bati de Forde.
Nec omittat eius-
dem appendicis,
part. 15. cap. 13. &
part. 19. cap. 1. &
part. 22. cap. 4. &
part. 29. cap. 12.
& part. 30. cap. 60.

*vendiceret hereditate 7 aut successorem sibi in ali-
quo Ecclesiastico constituit Beneficio.* Without
that challenged right of Inuestiture supposed in
the Incumbent (having also the Patronage)
which supplied all that the Patron, Bishop, and
Archdeacon at this day do in filling a Church,
how could any Parson make to himselfe a succes-
sor or an heire to haue colour to claim the Incu-
bencie from his ancestor. To this purpose may
be well rememberd a passage in a verdict found
in Rot. Placit. 6 Rich. 1. Rot. 1. of such a kind of
conueyance of S. Peter's Church in Cambridge:
the words are; *Iuratores bene sciunt quod qui-
dam Langlinus qui tenuit Ecclesiam illam, & qui
fuit persona illius Ecclesie dedit Ecclesiam illam,
secundum quod tunc fuit mos Ciuitatis Cantebrie-
gie, cuiusdam parenti suo Segario nomine qui illam
tenuit per LX annos & plus, & fuit persona illius
Ecclesie & ipse postea dedit Ecclesiam illam Hen-
rico filio suo qui illam tenuit per LX annos &
ipse in ligea potestate sua dedit illam Hospitali
Cantebriege per Cartam suam & idem Hospitali
habet Ecclesiam illam.* They discreetly find the
custome of the Citle to maintaine the Conuey-
ance, supposing (it seems) that the custome would
help the last Grantors title, although the Com-
mon Law, which had by that time receiued some
change herein, by force of the Papall Decrees,
should not haue allowed it. I know, in the Canons
another thing is also vnderstood in this matter

of Succession, that is, the irregularitie of the
 sonne of a Clerk; but that can extend only to
 the matter of Illegitimation vpon Mariage for-
 bidden to the Clergie. For which point alone,
 the Bishops refusall had been the best helpe, but
 that indeed the other kind of disposition of
 Churches by Inuestiture preuented his refusall
 when Presentation was not made to him.

V. But after such time as the Decretals and
 the encreasing authoritie of the Canons, about
 the year M. CC. had setled the vniuersall course
 here of filling of Churches by Presentation to
 the Bishop, or (as it seems sometimes it was) to
 the Archdeacon, or to the Vicar of the Bishop,
 or Gardian of the Spiritualities; that vse of
 Inuestitures of Churches and Tithes severally
 or together, practiced by Laymen, was left off,
 and a diuision of Ecclesiasticall & Secular right
 from thence hath continued in practice. Neither
 did the King afterward (much lesse common
 persons) fill their common Parochiall Churches
 without such presentments from Bishops. Pa-
 rochiall Churches, for of speciall donatiue Chap-
 pels we here speak not. neither were Appropri-
 ations of Churches & Tithes afterward allowd,
 that had not a confirmation from the Ordinarie
 immediat or supreme. And in the same age also
 came in the Law of the Laps, whereby the Bi-
 shop is to collate after six moneths vpon the Pa-
 trons default, it being before at his libertie to fill

Vide Rot. par. 9.
 Rot. 8. membr. 1.
 alibi Græ in Ar-
 chidia, que ad illi
 tempora spectant.

a. 2. Ed. 3. 33. h.
 3. Ed. 3. 34. h.
 10. Ed. 3. fol. 50. a.
 Et vide Canon
 Episcopi Lincol.
 in Canonibus. 64.

his Church at his pleasure: neither was he confined to any time. That time of Laps was (according as the vse of Presentation grew by degrees settled) receiued into the Laws of *England* out of the generall ^b Councell of *Lateran*, held in 25. *Hen. 2.* vnder *Alexander* the third; to which, foure Bishops (according to the ancient vse of this Kingdom) that is, *Hugh* Bishop of *Durham*, *Iohn* Bishop of *Norwich*, *Robert* Bishop of *Hereford*, and *Reinold* Bishop of *Bath*, were sent as Agents for the Church of *England*. By that Councell, after vacancie of six moneths, the Chapter is to bestow those Churches, which the Bishop, being Patron, had left so long void; and vpon their default, the Metropolitan. but no word is of Lay Patrons in it. Yet by reason of the Autoritie of that Councell, and of a Decretall^c of the same Pope, which speaks of like time vpon default of Lay Patrons, it hath beene since taken here generally, that after vacancie of six moneths, the next Ordinarie is regularly to collate by Laps. Which perhaps was receiued for a Law, to continue as it hath done, in the Councell or Conuocation at *Pipewell*, held in the first of *Richard* the first, and some ten yeers after that Generall Councell of *Lateran*. For in that of *Pipewell*, the printipall thing in hand was the providing for Churches vpon death of their Pastors. *Habitus est* (saith *Ralf de Diceto*, Dean of *Pauls* vnder King *Iohn*) *generalis conuentus iuxta dispo-*

^b Vide Reg. de
Homedon, an. 1179.

^c Extr. de iur.
Paruar. c. 22.
an. 76.

et de iur. iur.
et de iur. iur.
et de iur. iur.
et de iur. iur.

et de iur. iur.
et de iur. iur.
et de iur. iur.
et de iur. iur.

Chap. 12.

dispositionem Regis & Archiepiscopi XV Kal.
 Octobris apud Pipewell, ut de consilio vacantium
 per Angliam Ecclesiarum haberetur tractatus. I
 know it was for many Churches then void. but
 it is like enough that according to the gene-
 rall Councell this Law was then here recei-
 ued. but that only a rousing coniecture, and
 so I leaue it. and as in the Canon Law the
 Councell of Lateran (which must be understood
 that of Alexander the third) is commonly affir-
 med for the autoritie of the originall of the
 right of this Laps in the case of Bishops speci-
 ally and Chapters, so is it, in ancient monuments
 of our Laws, also in the case of Lay Patrons.
Ante Concilium Lateranense (saies a Bracton)
nullum curriebat tempore contra presentantem. And
 in *Placit. de Banco Mich. 3. Ed. 1. Rot. 105. Staff.*
 The Bishop of Couentrie and Liebfild pleads a
 collation by Laps *anterioris concilij*, against the
 Prior of Landa, to the Church of Paringham.
 and in the same Plea Rolls of Pasch. 5. Ed. 1. Rot.
 100. Linc. in a quare non admittit, by Alienor, the
 Queen Mother, against the Bishop of Lincoln,
 for the Church of Otkefaw, the six Monchs and
 the composition of them (which is there adiud-
 ged according to that in *Catesbies case*) is re-
 ferred to *Concilium Apostolicum*, which can be no
 other then that of Lateran, holowher the printed
 Copie of that which we commonly call Breton
 talks of the Councell of Linc. for the Director

d. Extr. de suppl.
 palam. 1. 2. & 4.
 ad Conc. p. 1. 2.
 & 4.

e. Lib. 4. m. de
 Bis. vlt. prof.
 cap. 6. 5. 3. Vnde
 p. placet. Reg. de
 Henric. par. 2.
 Annal. fol. 4. 10. 6.
 & Extr. de Offi-
 cio Iudic. ordinarij
 r. 4. quon. 100. ante
 Concilium Papae
 Alex. 3. collat. 10.
 folio. 10. 10. 10. 10.
 locum hanc ad.

f. Cate. Repen.
 par. 2. fol. 2.

g. Chap. 12. des co-
 ceptions fol. 27.

of the Laps, whereas indeed the Mss. haue for de
Lions, de Laur. which is doubtlesse for de La-
 teran, yer also in the Rolls of the Common pleas
 of Pasch. 9. Ed. 1. Rot. 38. Subtamp. the Archbi-
 shop of *Canterburie* defendant in a *Darrain pro-*
sensment, against the Abbot of *Lyra*, pleads that
 the Church (of *Godesbult*) *est plena ex collatione*
episcopi Archiepiscopi ratione Concilij Lugdunensis,
 and being demanded by what article of the
 Councell, would not thereto answer, wherupon,
 after long deliberation, iudgement is giuen for
 the Abbot. But in the same Plea the Law and
 custom of *England* for the six months time of
 Laps (which they call there *Consuetudo regni*
Anglie) is referd to a Councell; but none is
 specially named saving that of *Lions*. But al-
 though from Canonically autoritie the Laps was
 thus receiued into our Laws, yet it hath been no
 otherwise then the Baronage of *England* would
 permit it. for the Canons otherwise (as at this
 day they are) giue but foure months to a Lay
 Patron, and six to an Ecclesiastique, which diffe-
 rence the Law of *England* would neuer permit;
 as also neither that of the right of collation
 which the Chapter is to haue vpon default of the
 Bishop, howeuer the Pope would haue put it
 here in execution according to the words of the
 Councell; which you may see in the authorities
 before noted out of the Text of the Canon Law.
 and therefore the Law of Laps is well referd ra-
 ther

ther to: *Consuetudo Regni Anglia* (by which title other parts of our * Laws were often named that were of later beginning) then to the Councell, although thence doubtlesse, as is shewd, it had its originall. But although now, what through the Decretalls and other Canons against Lay mens Inuestitures, what by reason of the Law of Laps, the Patrons former interest or challenged right was much diminished in the Church and the disposition of the revenues of it (for it followd also that the Ordinaries assent was requisite) yet the *formula* or precedents used from ancient time in the recouerie of presentations still remaine, to this day, Characters in them of that Inuestiture, as the *quare impedit*, that is, *Præcipe A. quod iussu & c. permittat B. presentare idoneam personam ad Ecclesiam de N. quæ vacat & ad suam spectat donationem & c.* Where *Donatio* still sauiors of the ancient right of Inuestiture, agreeing whereto is that of *Ecclesiam* & *condere*, used elsewhere in our Law, and attributed to the Lay Patron. Neither doth *presentare ad Ecclesiam* originally denote otherwise then the Patrons sending or placing an Incumbent into the Church, and is made only of *representare*, which in that Councell of *Lateran* and elswher occurreth also for *presentare*. *representare* is properly to restore, give back, or repay, as *reddo* or *represso*, whence *presentare* taken in the barbarous times denoted as *dare* or *donare*, so that

idoneam

1 Reg. orig. fol.
22. h. inter prelatos
latinos.
Vide 19.
fol. 2. de. Briefo
fol. 18. de. fol.
35. h. Reg. orig.
fol. 98. a.

1 Glanv. lib. 6.
cap. 17. alibi item
scilicet in Arch.
uis que vetustiora
Richard. p. 101.
aut initij Johannis
tempore spectant.
& vide Reg. de
Non. de. fol. 42. 5. h.
& p. 13. Non. 3.
part. 2. membr. 2.
1 Ex. or. tit. de. Conf.
lib. 2. 11. cum Glo.
vul. & tit. de. Prob.
& dig. c. 31. In La.
titanis. §. 2. & tit.
de. primilog. d. 3. &
Hofm. Summa.
tit. de. Capell. Ma.
nachum. & fo.
pin.

idoneam personam ad Ecclesiam presentare was all
 one with *idoneam personam ad Ecclesiam dare* or
 donate, or in *Ecclesia constituere*, or otherwise, as
 in the Apostles word is to Titus, where he bids
 him *constitue* that is, appoint or
constitue, or indeed present Priests or Encum-
 bents in every Case for he that there should turn
 it by present, might so keep the proprietie of the
 word in both tongues, though not as present is
 now restrained. this is iustified out of an old Glos-
 sarie that turnes *Represento* by *interstitium*. for then
 cleerly *interstitium* is *Presentare* while *presentare* so sig-
 nified also in practice, that is in the time of the use
 of Lay Inuestitures, all Churches so given were
 properly Donatives, which attribute hath been
 since restrained, chiefly to such free chappels as
 the Ordinarie had no interest in, but are collated
 or given by the act only of the Patron. and this
 interpretation of *presentare* is iustified also out
 of the *quare impedit* upon a right of collation
 (which is but a donation) by the Bishop, wherein
 the words are also *quod permittat presentare ad
 Ecclesiam* &c. Donation (which is meerly as
 Inuestiture in regard of the Bishop) is there cal-
 led Presentation. So also is the Law in the Kings
 Case and of common persons, being distubbed to
 collate by Letters Patents to their free Chappels
 or Donatives, the Writ in those Cases is on-
 ly *presentare*, which confirms that it denotes
 Donation or Inuestiture. But in the Counts

v pon

2nd Chap. 12.

upon such Writs, the speciall matter must be dis-
covered. The like Law is in the Case of him that
hath the Nomination of the Clerk: his Writ is
also *presentare*, although another have the right
of that which is now known by the bare name of
presentation. Nomination indeed or *nomination* be-
ing the true and eldest name found in the Laws
belonging to the Church, that denote filling or
presenting to a Church, in that sense as Presen-
ting is taken for giving or mueling. For, in the
primitive times, when the Patron had founded
his Church, he nominated whom he would have
receiued into Orders for the serving of that
Cure; and then if the nominated were found
worthy hee was receiued into Orders for that
purpose, which Ordination turned afterward into
Episcopall institution, as is before declared. that
nomination was indeed as Ineffluence or giving
the Church, so is the word used in the Laws and
agreeing to them is the proper time of Latin
wherein *Nominatio* is for giving a Place or
Office that is void. And as these phrases of the
Writs tall of the ancient Right challenged by
the Patron; so do some assertions in our year
books of later time; as that of entering into an
Adowson by entering into the Church, of pas-
sing an Adowson by Inuente or senin at the
Church-dore, of the Patrons entering into the
place of foundation if the Church cease to re-
main hallowed, and the like. And to like origi-
nall

D d d

o An^d N^oap.
147.

p. 24. 24.
ad 24. 24.

q. 11. 11. 11.
11. 11.

41. Ed. 3. 61. 1. 1.

1. 3. Hen. 7. 10.
17. a.

1. *Vide 19. Ed. 3.*
 20. *Quare impedit*
 60.

shall may you referre those of the Kings presentations, which haue *Dedimus & concessimus* in them yet retained, although the force of the words by the later Law, make but only a presentation. But the Law is now settled; neither with vs hath the Patron alone now any prerogative or direct interest in the Church or the revenues, beside his right of Aduowson or Presentation to the Bishop, by whose institution and the Archdeacons induction euery Church regularly is to be filled. Neither (for ought I haue heard) hath he in our Law any of those *Droits honorifiques*, which the French allow him in Precedence, Seats, and the like. These particulars of Benefices and Aduowsons had here their place, both because in the ancient conueiance of them either by *Inuestiture* to an Incumbent, or by *Appropriation*, the revenue that was in Tithes passed by expresse words, and that in point of interest from the Patron, as also in regard that, at this day, the Patron of a Parson prohibited by *Indiscret*, to sue in the Spirituall Court for the fourth part of the Tithes of a Church, may haue his *Droit d'auowson de Dismes*. it was requisite therefore to adde these not vulgar or obuius notes of the Aduowsons in this discouerie of the ancient conueiance and interest of Tithes.

CAP.

Hall

b d d

CAP. XIII.

I. Infeodations *here into Lay hands since the Statute of Dissolutions.* Of Infeodations before that time in England, *some what more of the originall of Lay mens practice in arbitrarie Consecrations or Infeodations.*

II. Exemptions or discharges of payment originally by Privileges, Prescriptions, Vnities, Grants or Compositions, and by the Statutes of Dissolutions.

From those arbitrarie Consecrations, and frequent Appropriations of Tithes (whereof we haue hitherto made mention) to Monasteries or other Religious Places, as Colleges of Regulars, Chantries and Free Chappels, came the present and common Infeodations of them into Lay hands, which began in the age of our Fathers. For, the Portions of Tithes conueied to them out of Closes, parts of Mannors, and whole Demesnes, by the owners, together with the Tithes granted and possessed with appropriated Churches, were first by the Statute of Dissolution of Monasteries in 31. Hen. 8. and by that other of 1. Ed. 6. given to the Crown, and from thence granted to Lay men, whose Posteritie or Assignes to this day hold them with like limitation of estate, as they do other inheritances of Lands or Rents, and, for them,

them, haue like remedie by the Statut of 32. Hen. 8. cap. 7. by reall action as *Assise, Dower*, or other originals, as for Lands, Rents, or other Lay possessions by the comon Law they might haue. But although in other States these Infeodations or Conuiciances of the perpetuall right of Tithes to Lay men, be very ancient and frequent also; yet no such certain or obuius testimonie of their antiquitie, is in the monuments of England as can enough assure vs that they were before the Statut of Dissolutions in any comon vse here. But some were, and, for aught appears in the practice of the time, many more might equally haue been. And what scruple was there but that long before the generall dissolution of Monasteries, Henrie the first might (by the Law of the Kingdom) haue made Infeodations into Lay hands (as Henrie the eight did) of all Tithes belonging to the Priors aliens whose possessions were given to him by Parliament, he had them settled in the Crown in Fee, and afterward disposed of them to other Ecclesiastique Corporations at his pleasure, no otherwise then of other Lay possessions. By the way, we vnderstand, in these Infeodations, by the name of Lay men, only such as were not either in Orders or professed in Religion; for otherwise all the possessions of Tithes enioied by Nimbres and the like, that were indeed Lay (though not comonly called so) might be comprehended vnder

a Ret. Parl. Hen. 5. part. 2. art. 9.

b Vide Cart. 2. Hen. 5. part. 1. num. 3. &c.

Chap. 130

Chap. 13.
the name of Infeodations. But, that some were
here; observe that of Oda Bishop of Bayeux and
Earle of Kent, which is before cited out of the
lives of the Abbots of S. Augustines in Canter-
burie. The words are, *Decimas aliquas quas
mei fideles habebant* &c. What can that be,
according to the words, other then Tithes that
were in the hands of some of his Tenants?
You may adde that of Robert S. labri cited be-
fore out of the Book of Bosgrave, where he had,
by the gift of his brother William, certain Tithes,
which he gaue to the Priorie, for maintenance of
a fourteenth Monk. And observe the rest of the
Deed there. So out of the Book of Osney it ap-
pears before, that *Decimario Nicholai de Stode-
ham quam Fromundus (Capellanus) tenebat* is
granted by D'Oilly. Had not D'Oilly this from
Stodeham? Or was Stodeham here one of his
Ballifes or Fermors, whose Tithe he graunted as
Lord or according to covenant with the Lessee?
Other such occurre sometimes. And perhaps,
Decima hominū meorum, & the like granted, may
suppose a tithe possessed in the Tithes by the Lay
grantor. And in the same Book of Osney, in
a Passage written in a hand of about Hen. 9. con-
cerning the conveyances of Tithes by Lay men to
Monasteries, it is related, that he that wrote it,
saw *Quendam Rogerum D'Oily Dominum cu-
iusdam partis de Bampton in Episcopatu Lincol-
niensi suis Decimis ita vii, vii nunc vni nunc alteri*
Ddd 3 de

Ddd 3

46

*de suis Valets is ipsas conferret annuatim qui sibi in
diuersis officijs ministrabant*, vntill after ward bee
erected a Chaunterie with them in the Church of
Bampton. These Grants to his Valets, plainly
were as Infeodations. And what els was in that
known case of *Herne* and *Pigot* in *Mich. 39.*
Et 40. Elizab. but an ancient kind of Infeoda-
tion, at least an Inheritance of Tithes from im-
memoriall time in a Lay man? That, and other
like to it, might begin vpon reall compositions,
and so the Tithes be deriued out of the Church.
But regularly, I thinke, at this day no kind of In-
feodation is here allowable in Lay mans making
title to a perpetuall right of Tithes (except only
by the later Statuts of Dissolutions) vnlesse it ei-
ther be deriued from some old Graunt of dis-
charge from the Parson, Patron, and Ordinarie,
(in which case, hee to whom the Infeodation
should be made, could haue it only as a Lay pro-
fit issuing out of the discharged land) or ioyned
with a Consideration to be giuen for mainte-
nance to the Parson, by him that receiues them;
and this either from time immemoriall, or by an-
cient composition. So I take the meaning of our
reuerend Iudges to haue been touching this
point. In summe then we may affirme, that some
such ancient Infeodations haue been in *England*
as in other States; but, that of later time none
are allowable. (if deriued from a other ancient
originall, then from the Statuts of Dissolutions)

vnlesse

d. *Repon 21*
fol. 45. a.

e. *Vide ibid. Com-
mentatio, ibid.*

vnlesse they bee anciently deriued out of the Church first by discharge, or appeare to be but as a Reward giuen in pernancie, or as Consideration for a Pension or other competent Maintenance yeerely payable to the Parson. Which withall well stands with the common opinion of the originall of such Infeodations; whereof we haue alreadie ^f spoken. And whereas it hath been resolved, that without these reasons, a Lay man was not here capable, at the common Law, of Tithes by pernancie; it well agrees with a Decretall of ^s Alexander the third, which forbids one that married a Parsons sister, to enioy a Tithe given him by the Parson, as for the marriage portion, although the Parson were still living. But also, that we may not defraud you of any testimonie of former times, that may seeme obseruable touching these Infeodations, where of so few examples and so little mention is in the Moniments of England, take this speciall Disquisition, written in a hand of about Henrie the fifth, in the Booke of ^h Osney, which would as well giue light to the course of Arbitrarie Consecrations (before largely opened) as to these Infeodations, if it were of sufficient credit. but you shall first haue it compendiously deliuered, and then iudge of it. This title is put to it, *Qualiter Laici ad id priuilegium peruenierint quod laici Religiosi illas (Decimas) conferre possunt.* Then sayes he that writes it; he had heard from

f cap. 54

g *Extr. de Ab-
batib. c. 3. per nunciu
ad nos.*h *In Biblioth.
Catholica.*

from a good Ciuill and Canon Lawier, that had been present at the Disputation of the point, in a case happening between a Religious house and a Parson, for Tithes in the Parsons Parish, who claimed them *iure communi*, that the Aduocat for the Religious house being put to make a speciall vield against the Parsons common right, told the Court a long storie of Easterne holy Warres about *Pipins* time, and interposed somewhat of *Charles Martell*, and concluded, that the Pope and the Church euery where graunted, in reward to the Christian Princes, for their Barons, Knights, and Gentlemen, that spent their blouds, labours, and estates in those Warres, the priuiledge of arbitrarie disposition of the Tithes of their lands, by reason of which Graunt, they afterward made not only Arbitrarie Consecrations of them, but also Infeodations into Lay hands, according as the common opinion among the Canonists is too confidently receiued at this day. Then he tells vs that before remembred, of the Tithes in *Bampton*, and cites some texts out of the Decretals, that touch Infeodations. Next he relates, that among the Princes of the holy Warre, about *Martell* and *Pipins* time, the Duke of *Normandie* was a speciall one, whence hee had also that priuiledge touching Tithes, *pro seuo solo*, as the words are. And lastly (to bring us into *England*) hee thus concludes, *Ecce cum Dux Normannie Willielmus* *mor-*

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conquisitionem Anglia venisset, quidam Miles eius
 Robertus d'Oylleye nomine malens suas Decimas
 Deo commendare quam contra naturalem Ecclesie
 consuetudinem ipsis vsi, eas Ecclesie S. Georgii
 quam in Castris Oxenford construxit contulit, Et
 postea ad Monasterium Osney per Dioecesarium &
 Capitulum Lincoln. ac etiam per Aduocatum Ca-
 nonice deuenerunt. But it all casts of nothing but
 ignorance. For what touches Martell and his
 time generally, enough already is said. And see
 but what a bold ignorance here was, to tell vs;
 that the Duke of Normandie was one of the grea-
 test (personis Regum exceptis, as his Language is)
 that went in the holy Warre in succursum Eccle-
 sie Romane, in those times of Pipin and Martell?
 I would he durst haue told vs also who had then
 been Duke of Normandie. Neither that title of
 Dignitie, nor that name of the Countrey, were,
 till about C L. yeers after Martell, at all known.
 The Territorie being then vnder the French
 Kings, who long after gaue it to the Normans,
 and created it into a Dukedome. Indeed the
 Duke of Normandie had good place in the later
 holy Warres, about M. XC V. but did not that
 make this Aduocat say, that the Duke of Nor-
 mandie was a speciall Prince in the other also of
 Martell's time? Such of the later midle times
 stand not much vpon the mingling of Stories,
 that differ in themselves euen many whole ages.
 Besides, he tells vs of strange Princes names of

the East, that made the Warre against the Church. Plainly, the most pretended cause of the rest that erre herein as much as hee doth, is the *Saracenicall* Warre in *Martell's* time, and that out of *Spain*, not from the East. And had it been so vnder *Martell's* time, as it is vsually affirmed, what had that been to *England*? But you see his providence for that matter, where he deriues it from the Duke of *Normandie*. But what though there had been some such Duke of *Normandie*, whose Successor had afterward either conquered or inherited *England*? had therefore the old supposed priuiledge of retaining or disposing of Tithes, been thence communicated to his subiects of *England*? and that to the losse of the Church here, that neuer could haue gotten good by the supposed cause of the priuiledge? All the Canon and Ciuill Law that the Aduocat had, could neuer haue proued such a consequent. It will still remaine most probable, if not cleere, that what Infeodations were in *England*, had their originall as well out of the right of arbitrarie disposition of Tithes challenged by the Laitie, without the grant of the Pope or Church, as out of Compositions or Conueyances from the Clergie; according as in other States. For no sufficient Storie, no credible Monument, no Passage, or Testimonie of worth, can iustifie that generall right of retainer or disposition to haue been given by the Clergie, or Pope,

vpon

Chap. 13.
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Chap. 13.

upon any cause whatsoever; though the Canonists and others that follow them, cry against it, *vsque ad riuum*. The vse of Infeodations, before those later holy Warres, we haue already shewd. And that no vse of them could be about Martell's time, is not lesse apparant, by what is also before deliuered. But beside this blind testimonie of the ground of Consecrations or Infeodations; for England especially, you may take that (as it is) also of Lindwood, who thus speaks touching the Portions which Religious houses had. He *Portiones* (saith he) *potuerunt peruenisse ad locum Religiosum de concessione etiam Laici cum solius Dioecani consensu de Decimis vel prouentibus quas Laici ualis ab Ecclesia alia habuit in feudum ab antiquo*, according to that in *tit. de his que sunt à Prelatis sine ass. cap. c. cum Apostolica*. And hee addes, that this is only true, if those Tithes were infeodated before that Councell of Lateran of M C LXXIX. And then concludes with, *Nam ante illud Concilium bene potuerunt Laici Decimas in feudum retinere & eas alteri Ecclesie vel Monasterio dare. Non tamen post tempus dicti Concilij*. For his interpretation of the Councell, enough before, towards the ends of the VI. and X. Chapters. But doth not Lindwood here suppose ancient Infeodations of Tithes (at least created by Churchmen) in England? Doth he not thence fetch the originall of Portions belonging to Religious houses in England?

i Tit. de locato & conducto c. licet bona uerb. portiones.

commonly, though he writ as a Canonist, yet he addes the speciall custom of *England* if he speak of any Canon Law, which he thinks had not place here. but he excepts not *England* in this, but implies it. therefore doubtlesse, he supposed a common vse of ancient Infeodations among our Ancestors. but I doubt he had not better ground for it then what he found in others of his profession, that had remembered the frequent vse of Infeodations in other States before that Councell. and he so applied it equally to his own Countrie, and with them takes the Infeodations to haue had originall only from the Grants of Church-men. therefore I value his testimonie here but as of a common Canonist, and not sufficient to satisfie vs touching our owne Countrie: neither in his age were the particulars of practice of the time before that *Lateran* Councell, or of the time of creation of Infeodations in other places, enough known among Lawyers. I adde only one note out of *Bracton* that may touch Tithes infeodated or turnd anciently here into Lay fee, and conclude this matter. He speaking of Land demised and recovered by the Legatarie, tells vs some opinion was of his time; that such Land after the recoverie *iterum incipit esse Laicum feodum & non ante; quod non erit de Decimis, cum semel efficiantur Laicum feodum; nunquam reincipient esse Decime, & hec vera sunt secundum R. & alios.* Did not he here suppose

k. Lib. 3. tract. de
Exceptionibus cap.
32. fol. 412. b.

suppose Lay infeodations of Tithes in England? let the Reader iudge. By the way, I note, that passage is corrupted in the print. The beginning is *Item for Iterum*, and that *R. & alios* (which I think stands for *Roger de Thurkelby* a great Iudge of that time) is *Biasios*. but according to my *Ms. Bracton*, I have thus alterd it. You may consider also if some Infeodations came not out of Lay mens enjoying of whole Churches with their possessions about the Norman Conquest. it is frequent in *Domesday*, to find that such a Lay man *tenuit Ecclesiam* of such a place, and sold it to such a one. and in the claimes of *Yorke-shire* there, the Entrie is *super Ecclesiam S. Marie de Moselege habet Rex medietatem eleemosynae scilicet S. Marie que iacet ad Wackefeld. Omne aliud habet Ilbertus & Presbyter qui Ecclesie seruit &c.* Where Tithes were in that time annexed by cōtinuance of payment or Consecration to Churches, perhaps they might in like manner as these Offerings or whole Churches, come into the Lay hands. but I leaue this to the iudgement of my Reader. And hereof thus much.

II. Now for *Exemptions* or discharge from payment, we have anciently had them here, and still retain some of them in the practiced Law. and that originally either by *Privileges*, *Prescription*, or *Grants* and *Compositions* and *V-nitie* of possession. The *Privileges* have been either such as were specially allowd and limited to

the Orders of the *Templars*, *Hospitalars*, and *Cisterciens* by the Generall Councell of *Lateran*, held in 17. of King *John* (of which more particular narration is before made) or by new Bulls for the discharge of this or that Monasterie or Order, at the Popes pleasure. By reason of the first kind of priuilege, those three Orders held their Lands discharged of payment so long as they manured them in their own occupation. at least all such Lands as they had purchased before the Generall Councell. and by the second kind sometimes whole Orders were discharged, as for example, that Bull to the ¹ *Pramonstratenses* in general given by Pope *Innocent* the third, grants them that of their own culture or other improvements they should pay none. Sometimes speciall Monasteries; as in that of the same Pope to the ^m Abbey of *Cherisey*. *De noualibus vero quæ proprijs manibus aut sumptibus colitis, aut de vestrorum animalium nutrimento, siue de hortis & virgultis, aut piscationibus vestris, nullas à vobis Decimas exigere, vel extorquere præsumat, sed eas elemosynæ aut pauperibus Monasterij vestri iuxta quod tu fili Abbas postulasti à nobis præcepimus assignari.* What force by the common Laws of this Kingdom, such a Papall priuilege in ancient time alone had, I abstain here to dispute. and although other examples enough might out of originalls be brought of the like, yet I touch not any of them neither, lest vnawares I might giue occa-

1 *Innoc. 3. in Epist.*
Decret. lib. 1. pag.
 201.

in *Ibid lib. 1. pag.*
 410. *Videbis Ex. 17.*
117. de Decimis c. 3.
Ex. multiplici.

occasion of some priuat controuersie. But they had their force in the Canon Law here, and being so allowd in allegations against Libels for Tithes, were strengthened also at length (especially those which were of the ancientest) with prescription of time, in so much that from them originally diuers Lands of dissolved Monasteries remain to this day discharged of payment. But in 2. Hen. 4. cap. 4. an Act of Parliament is made against those of the Cisterciens here, which purchased Bulls of Exemption for their demised Lands. and those of the Order and others putting such Bulls in execution are made thereby subiect to the punishment, contained in the Statut of 13. Ric. 2. of *Premunire*. Discharges by immemoriall *Prescription* of paying no Tithes (of things commonly and of their nature titheable) nor any thing in lieu of them, are by the latter common Law (since their Parochiall right established about the time of King Iohn) allowd only ^a to spirituall persons, but to no Lay man. The Laitie being since that time held incapable of Tithes both by pernancie (sauing in such a speciall case where continuall consideration was given to the Church, as in that Case before of *Herne* and *Pigot*) in their own right, as also by discharge vpon bare prescription alone, sauing only in Cases within the Statuts of Dissolution of 31. Hen. 8. and 1. Ed. 6. and the Statut of 32. Hen. 8. that warrants common Inscodati-

a. *Vignat. Rep. p. 100.*
2. Ed. 6. c. 13.
Nas. Tr. 11. 4. 11.

sons of them. and so is the practiced Law of this day. For, by those Statuts, lay Patentees of lands or Tithes haue like priuilege of discharge and title as the spirituall persons, whose Corporations were by them dissolved, before the dissolution enioied. Of the *Hospitalars* dissolved in 32. Hen. 8. I purposely abstain to speak. To this of Prescription, may be added that of Vnitie of Possession. For if any Religious house dissolved in 31. Hen. 8. held the Rectorie of Dale & Lands in the Parish immemorially paying no Tithes, this Vnitie discharges also the Patentees at this day, in such sort as the Monasteries were discharged. But by Compositions and Grants euery man, as well Lay as Spirituall, by the common Law (before the Statut of 13. of *Elizabeth*, made against Leases and Grants of Parsons) might be discharged of Tithes, as if the Parson Patron and Ordinarie ioind in it to the Parishioner either for consideration continuing (as in reall^e Composition) or for other arbitrarie causes not appearing to posteritie as in Grants by all three, or rather in Grants by the Parson, and Confirmations by the Patron & Ordinarie. And it is provided by the Statut of 2. Ed. 6. cap. 13. *tha no person shall be sued or otherwise compelled to yeeld, giue, or pay any manner of Tithes for any Mannors, Lands, Tenements, or Hereditaments which by the Laws and Statuts of this Realm, or by any Priuilege or Prescription are not chargeable*

o. Reg. Orig. fol.
38. b. F. 1. 1. 1.
supra.

able with the payment of any such Tithes, or that
be discharged by any Composition real. But al-
though a Lay man may not be discharged of all
payment by meer Prescription (ynlesse he begin
the Prescription in a Spirituall person) yet for
diminishing the *Quota* in payment only of a lesse
then the Tenth, he may p. prescribe, that is, *De*
modo decimandi. and to that purpose an imme-
moriall custome of a whole Town or Mannor
holds place at this day. So was the Law an-
ciently also. Beside these discharges, some may
here expect that part of our Laws, which with vs
(as the *Philippine* in *France*, and the *Carolines* in
Spain) discharge some things from payment of
Tithes, and seem to permit some customs *de non*
Decimando. But for that matter, so much as ypon
consideration was thought fit to be sparingly
said of it, is referd to the passages in the next
Chapter, that touches ancient prohibitions *de*
non Decimando. Neither indeed doth that part
of our *English* customs belong to the title of
Exemption or Discharge, for Exemption and
Discharge are properly singular rights to this or
that person or Land, and against the current of
the practiced Law, but those things touching
which any such prohibitions *de non dec.* by our
Law should be granted, are supposed generally
according to the reasons and practice of the
Laws of *England*, of their own nature, not tithe-
able. So that not so much a discharge is found in

p. Vide lib. 2. tit. 2.
non. 22. Prohibitiones
§. 6. & Reg. 2.
part. fol. 44.

q. 2. Ed. 4. fol. 14.

that course as a prevention of an vnlawfull charge which the Canons would lay vpon that which the Laws of the Kingdom account not at all in its own nature chargeable. But thereof somewhat more anon.

C A P. XIV.

- I. *The iurisdiction of Ecclesiastique causes, in the Saxon times, exercised by the Shriue and the Bishop in the Countie Court. and among them that of Tithes also was then to haue been there determind. The Bishops Consistorie seuered from the Countie Court by William the first.*
- II. *After the Normans, Originall suits for Tithes, were aswell in the Temporall Courts as in the Spirituall. and that continued till Henric the second or about King Iohn.*
- III. *Of the time since about King Iohn or Henric the second. Of the Indicauit and the Writ of right of Aduowson of Tithes. What the Law was in an Indicauit before that Statute of Westm. 2. A touch of ancient Prohibitions, De non Decimando.*
- IV. *Writs of Scire facias for Tithes. Enquests taken vpon Commission to enquire of the right of Tithes.*
- V. *Fines leuied of Tithes (in the time of Richard the first, of King Iohn, and Henric the third) vpon Writs of right of Aduowson.*

Chap. 14.

V. L. Scire facias by the Patentees against the

Governor of Tithes granted by the King.

V. I. I. Command of payment by the Kings Writ.

And of Tithes in Forests. Triall of the right of

Tithes incident in some issues.

AS a corollarie to the former parts that directly concerne the payment or consecration of Tithes, we thought fit to adde here in the Conclusion of the Treatise, the Historie also (but only the Historie) of the iurisdiction of Tithes in this Kingdom. It is cleer by the practiced comon Law, both of this day as also of the ancientest times that we haue in our yeer books, that regularly the iurisdiction of spiritual Tithes (that is, of the direct and originall question of their right) belongs, I thinke as in all other States of Christendom, properly to the Ecclesiasticall Court. and the later Statuts that haue giuen remedie for Tithes infeodated from the Crown after the Dissolution, leaue also the ancient right of Iurisdiction of Tithes to the Ecclesiastique Courts. But how the difference of Ages hath herein bin amongst vs, is litle enough known euen to them which see more then vulgarly. In declaration thereof, we shall aptly diuide the time tripartitly; into that of the Saxons; that from the Normans till about Henrie the second; and what intercedes from thence till this day.

F f f 2

I. In

a Videtur Leg. E-
pistolam apud
Fox. in Ecclia.
Hist. lib. 3. pag. 195.
col. 1. Hinc de-
bent Episcopi
&c.

I. In the *Saxon* times a jurisdiction of Eccle-
siastique causes (among which you may reckon
that of Tithes; although not much signe of it,
in exacting payment of them, appears in the
moniments of that age) was exercised jointly by
the ^a Bishop of the Diocese, and by the Shrise or
Alderman of the *reapagemot*, or Hundred, or
Countie Court, where they both sat, the one
to give *Godey* right, the other for *populor* right,
that is, the one to iudge according to the Laws
of the Kingdom, the other to direct according
to *Drinhit*. and in the Laws made for Tithes
By K. *Edgar* and K. *Knout*, you see vpon default
of payment it is ordaind, that the Bishop and the
Kings Bailife, or Shrise, with the Bailife of the
Lord of the Land, should see that full restitution
should be made. particulars of the exercise of
this kind of jurisdiction, I have not seen. But at
the *Norman* Conquest, this kind of holding Ec-
clesiastique pleas in the Hundred or Countie
Court, was taken away. Remember that as at
this day most of the Pleas Ecclesiastique are in
the Ordinaries Court within the Diocese, so
most suits in the secular or common Law were
Viscontiel and held in the Countie or Hun-
dred Court of the Shrise in those ancient
times, which may best be obserued out of one of
the books of *Ely* ^b the most especiall moni-
ment that is extant, for the holding of Pleas
in the *Saxon* times. That alteration at the

Norman

b In Bibliot.
Cassiana.

Norman Conquest, was by a Law made by the
Conqueror, and directed to all Tenants in
the Diocese of Remy, that was first Bishop of
Lincoln whither his See was then translated
from Dorechester. and although it be sent in the
direction by name to them only, yet it seems, it
grew afterward to be a generall Law, no other-
wise then the Statute of *Circumspecte agatis*, that
hath speciall reference only to the Bishop of
Norwich. The words of it ^c as they are recor-
ded, are, *Sciatis vos omnes & ceteri mei fi-*
deles, qui in Anglia manent, quod Episcopa-
les leges, quæ non bene secundum sanctorum
Canonum præcepta, vsque ad mea tempora
in regno Anglorum fuerunt, communi Con-
filio Archiepiscoporum meorum & cætero-
rum Episcoporum & Abbatum, & omnium
Principum Regni mei emendandas iudicauis.
Propterea mando, & Regia auctoritate præci-
pio, vt nullus Episcopus vel Archidiaconus
de legibus Episcopalibus amplius in Hun-
dret placita teneant, nec causam quæ ad regi-
men animarum pertinet, ad iudicium seculari-
um hominum adducant, sed quicunque se-
cundum Episcopales leges, de quacunque cau-
sa, vel culpa interpellatus fuerit, ad locum
quem ad hoc Episcopus elegerit & nomina-
uerit, veniat, ibique de causa sua respondeat,
& non secundum Hundret, sed secundum Ca-
nones & Episcopales leges rectum Deo, &

c In Rot. Inspec.
Chart. 2. Ric. 2.
pro dec. & cap.
Lincoln, membran.
12. Idem est
quod habetur An-
glice apud Foxe
Hist. Eccles. An-
glie, lib. 4. pag. 154.
col. 2.

manent in Anglia
in dem. & ceteri
Anglice & ceteri

"Episcopo suo faciat. Which I rather transcribe here, because also it seems to give the originall of the Bishops Consistorie, as it sits with vs, divided from the Hundred or Countie-Court, wherewith, in the Saxon time, it was ioyned. And in the same Law of his, is further added, *Hoc etiam defendo ut nullus Laicus homo de legibus que ad Episcopum pertinent se intro-mittat &c.*

II. Afterward, vnder the succeeding Princes, till about *Henrie* the second, it seemes, that the Iurisdiction of Tithes was exercised in both Courts, as well Secular as Spirituall, and that by originall suit; not only in the one by the first instance (as regularly the later common Law would have it) and in the other by Prohibition only. I know, little proof will serue most men to iustifie, that the Spirituall Court had then a Iurisdiction of them; but also some testimonie I have seen of a particular recouerie of Tithes in the Bishops Court in that age. The Monks of *Northampton*, vnder *King Stephen*, recovered two parts of the Tithes of the demesnes of *Wullaueston* against *Anselm de Cocbia*, before *Robert* Bishop of *Lincoln*, as Ordinarie. In plenaria Synodo coram *Roberto Lincolnensi Episcopo* districtionauerunt, as the words are in a sealed Charter of *Simon* the second, Earle of *Northampton*, then liuing; wherein hee testifies both the recouerie, as also *Anselme's* confirmation of the same two parts,

accor-

d. *Cherita Simonis*
Comitis *North* in
Thesaur. Cotton.

according to the reconerie, and addes also of his
own *volo & precipio vt illam Eleemosynam babe-*
ant & teneant liberam & quietam. And to this
you may adde the Appeales to Rome from the
Audience of the Archbishop of *Canterburie* and
other Ecclesiastique Conisants touching Tithes,
that are (as the ancientest Precedents of any such
Ecclesiastique proceeding in *England*) remain-
ing among the Epistles of *Iohn of Salisbury*, a
great favorite of *Thomas Becket* Archbishop of
Canterburie in the beginning of *Henrie* the se-
cond. In one of them it is observable by the
way ^f, that one *Richard*, the Tenant of Land
lying within the Parish of *Lenham*, being sued
in the Audience by *Andrew* the Rector for his
Tithes, alledges in Court, *Sibi a nobili viro Wil-*
lielmo fratre Regis, Domino suo, esse prohibitum,
ne, eo absente, super Decimis de quibus agebatur,
causam ingrederetur. Yet the Court ceased not
therefore to proceed; but Sentence being readie
to be giuen for the Rector, the Cause was sent to
Rome, vpon the defendants Appeale. And al-
though the ^g title were only vpon the Grant of
him that arbitrarily consecrated, yet was it som-
time determined in the Spirituall Court. But
also that in this elder age before about the time
of *Henrie* the second, the Kings secular Courts
of Iustice originally held plea of the right of
Tithes, is as plain by infallible prooffe of ancient
Moniments. To begin with the eldest times of
this

e. 1. folio 112.
22. 2. 2. 109. d.
111.

f. 1. folio 109.

g. Appointed to
the Law of God.
47. cap. 5.

h. Chart. orig.
H. 1. in Arco
Londin.

Reg. vol. 1. p. 11
H. 1. in Arco
Londin.

Reg. vol. 1. p. 11
H. 1. in Arco
Londin.

this part of our Division; there remaines yet
recorded a Plea held *apud Falscardi montem*, un-
der *William* the second, betweene the Monks of
Salmur and *Philip de Braiosa*; wherein, the
Monks claiming against him and the Abbey of
Fischamp (in *Normandie*) *Parochiam quæ ad*
Sanctum Cuthmannum pertinet de Castello de
Staninges (these are in *England*, I thinke in
Sussex) *de Bedingas, & de Bedelingtona*; by
the testimonie of *Robert Earle of Mellent*, a
Iudgement of the Conquerors time is cited, by
which the Abbey of *Fischamp* had the Parish of
S. Cuthmann adiudged to it in the Kings Court.
And thereupon (it being denied by none) it was
now again adiudged, that the Monks of *Salmur*
should restore whatsoever they had taken *post*
mortem Regis in Decimis & Sepulturis & Of-
frendis &c. to the Church of *Fischamp*. And
while some delay was in the execution, the King
sent his Writ *ad Iusticiarios suos de Anglia*, that
is, to *Ralf* Bishop of *Chichester*, *Randoll* his Chap-
laine, *Hamon* his Sewer, and *Vrso de Abetot*,
whereby hee commanded, *Ut facerent Ecclesiam*
S. Trinitatis (that is, of *Fischamp*) *habere totam*
Parochiam S. Cuthmanni & Decimas & Cor-
pora & omnes Cusumas tam de viuis quam de
mortuis sicut pertinebant ad predictam Ecclesiam
S. Cuthmanni antequam Willielmus de Braiosa
haberet Castellum de Bembra (*Bramber Castle*, in
Sussex, giuen by *William* the first to *William de*
Braiosa)

Brasfa) & *quicquid de supradictis customis Monachi de Salmur ceperint reddi.* The right of Tithes and Offerings appears here plainly to haue been determined in the Temporall Court by two Iudgements, the one vnder the Conqueror, the other vnder his sonne *William*. And it is found vpon record, that about 10. Hen. 1. a Writ was sent to *Manasser Arse*, out of whose Lands, diuers Tithes were conueyed into the Monasterie of *Fiscbamp*, commanding him, *Quatenus Decimas a parentibus suis inuiclabili iure concessas & datas Fiscamenti Ecclesie, Monachos suos apud Coges degentes omnes in pace & quiete habere faciat; sinon, Iustitie Regis facerent.* Whereupon he sends his Precept to all his Tenants of such Lands, commanding them to make payment. *Si quis autem aliter (saith he) facere presumpserit Regis ira & nostre pœnam sine dubio patietur.* So among the Liberties of Saint Iohn of Beuerley^a, this Writ is found of Henric the first. *Henricus Rex Anglorum Osberto Vicecomiti de Eboraco & Geraldo de Bridesala salutem. Præcipio vobis, vt faciatis habere Ecclesie Sancti Iohannis de Beuerlaco, Decimas suas sicut vnquam melius habuit, in tempore Regis Edwardi & patris mei, de illis videlicet terris omnibus de quibus homines Comitatus Eboraci testimoniū portabunt quod eas habere debent. Et quicunque detinuerit, sciat quod ego volo*

1. Chanc. 117.
2. 7. vide sup.
3. 2. 17.

1. M. 10. B. 11. 11.
Continua.

1. In Bibl. autoris.

" vt rectum faciat Deo & S. Iohanni & mihi.
 " T. Ran. Cancellario, & Comite de Melles, a-
 " pud Londoniam, &c. What is this else then
 a kind of *Iusticiis* to the Shirife of *Torkesbure*,
 for the right of *Tithes*, determinable by the
 Countrie? Doth not *homines Comitatus Eboraci*
 denote as much? Of the same time also, in a¹ Vo-
 lume of Constitutions & other things belonging
 " to the Church of *Tork*: *Henricus Rex An-*
 " *glorum Osberto Vicecomiti de Eboraca salu-*
 " *tem. Mando tibi & præcipio vt Archiepisco-*
 " *pum Girardum permittas & facias honorificè*
 " *tenere Ecclesias meorum priorum Mane-*
 " *riorum quas S. Petro & eidem dedi cum om-*
 " *nibus Capellis suis, & cum omnibus Decimis*
 " *suis, & cum omnibus terris suis, videlicet Ec-*
 " *clesiam de Bokelinton, & de Driffeld, & de*
 " *Killum, & de Pickering, & de Burgo. Waltera*
 " *& Eusemaro Ministris de Driffeld præcipio*
 " *vt Decimas de hoc præterito Augusto, quas*
 " *non reddiderunt, plenariè reddant sicut Ec-*
 " *clesia eas iustè habere debet & sicut vnquam*
 " *eas melius habuit tempore patris mei siue meo*
 " *antequam eas dedissem S. Petro, & videant ne*
 " *ampliùs inde clamorem audiam. si quis inde*
 " *iniuriam fecerit Archiepiscopo, tibi, Osberte*
 " *Vicecomes, præcipio vt plenariam reëtitudi-*
 " *nem inde facias. Teste Rogero Episcopo Sa-*
 " *risburiense apud Westmonasterium in Natali*
 " *Domini. And another is there, in these words:*
 Hen-

" Henricus Rex Anglorum Anselmo Vicecomiti
 " & omnibus Prepositis & Ministris suis de
 " Driffeld, & de Pokelinton, & de Killum, & de
 " Pikering, & de Burt, salutem. Volo & præci-
 " pio quod faciatis habere Hugoni Decano &
 " Clericis suis benè & plenariè omnes rectas
 " Decimas de Dominijs meis in omnibus rebus
 " per hæc prædicta Maneria mea & de omnibus
 " Parochianis, qui ad Ecclesias horum prædi-
 " catorum Maneriorum meorum pertinent. Si-
 " militè facite ei habere benè & plenariè &
 " Decimas & omnia iura prædictarum Ecclesia-
 " rum in tertis & capellis. Quia pro salute ani-
 " mæ meæ & omnium antecessorum meorum
 " beato Petro eas concessi in Eleemosynam. No-
 " lo autem quod pro recti penuriâ quicquam
 " perdant quod iustè habere debent. T. apud
 " Eborum. And about 6. Hen. 2. when Turstin
 " Fitz-Simon usurpt the Tithes of Mereham, be-
 " longing to the Abbey of Abingdon, one of the
 " Monks were sent ouer to the King into France,
 " Et per eius iussitiam & autoritatem (as my " Au-
 " thor saies) rectum suum Ecclesie sue restitueretur.
 " Quod & ita factum est. Rediens enim frater qui
 " missus fuerat breue à Rege transmissum in hæc ver-
 " ba reportauit. Then the writ followes, directed
 " from Tours to the Shirefe of Barkshyre, Hen-
 " ricus Rex Anglie & Dux Normannia & Aqui-
 " tania & Comes Andegania, Vicecomiti suo &
 " ministris suis de Bereghra salutem, Si Eccle-

in Collis. Alind-
 nensis Ms. Bibl.
 Cotton.

11^{ra} *de Abbendon* habuit Decimam de *Mer-*
 12^{cha} ad luminare Ecclesie tempore *Henrici*
 13^{Regis} avi mei & anno & die quo fuit mortuus
 14[&] & vivus & post, & inde sit disseisita iniuste &
 15^{sine} sine iudicio, tunc precipio quod sine dilatione
 16^{inde} inde eam refaisiatis, Et ita bene & in pace &
 17^{libere} libere & iuste tenere faciatis sicut melius &
 18^{liberius} liberius tenuit tempore *Henrici* Regis avi mei,
 19^{Et} Et precipio quod quando *Tursinus* filius *Si-*
 20^{monis} monis redierit in Angliam, quod Abbas *Abben-*
 21^{donie} donie plenum rectum habeat de terra quam
 22^{prædictus} prædictus *Tursinus* filius *S.* tenet de feudo
 23^{Abbatie} Abbatie. Et si Abbas poterit distracionare
 24^{quod} quod non defecerit de recto prædicto *T.* in
 25^{Curia} Curia sua, Abbas inde ei in Curia sua rectum
 26^{teneat} teneat. *T. Magistro Iohanne de Oxensford* a-
 27^{pud} pud *Turonem*. The Shirife, by vertue of this
 Writ, vpon enquire of the point of it in his
 Countie-Court, restored the Abbey to the pos-
 session of those Tithes. The words of the Booke
 are, Cum verò per lectum esset Regis breue in
 28^{pleno} pleno Comitatu & manifestè compertum ro-
 29^{tius} tius Comitatus testimonio^a quoniam præfata
 30^{Decima} Decima ad luminare Altaris *S. Marie* perti-
 31^{neret} neret, & quod eam *Tursinus* iniuste tenebat,
 32^{Vicecomes} Vicecomes ex parte Regis illum disfaisanit,
 33[&] & eam Altari cui adiacebat restituit. What
 can be plainer, then that in those times (if these
 examples have credit, as indeed they cannot iust-
 ly be impeached) the Temporall Courts held Ju-
 risdiction

jurisdiction of Tithes in point of right; and not only the Spirituall, and to confirm it, we adde also the autoritie of *Iohn of Sarisburie* • that then liud. he in an Epistle to the Bishop of *Excester* relating some of those Positions of the common Laws; or the *Antiquæ consuetudines* (as they called them) which *Thomas* Archbishop of *Canterburie* about 12. of *Hen. 2.* so much withstood, mentions one to be *Quod Laici, siue Rex, siue alius, causas de Ecclesijs & Decimis tractent* which well agrees with the authorities before cited. But this was utterly disallowd then by the Pontificiall Laws, as, beside the autoritie of the common Canons, may be seen in an Epistle of *Alexander* the third, to the Bishop of *Excester* and the Dean of *Chichester*, wherein it appears, that one *William* a Clerk of *Chichester* had appealed to the Pope about Tithes, the suit being twixt him and the Parson of *Curket*. and the Parson had on the other side appealed *Ad audientiam Domini Regis*. whereupon saies the Pope, *Quoniam nemini liceat super rebus spiritualibus ad secularem Iudicem appellare*, they should enquire of the matter, depriue the Parson, and send him to *Rome*.

III. The frequencie of such originall suits for Tithes, in the temporall Courts (through the Canons and the power of the Pope increasing, and growing more dreadfull to *Henrie* the second, and King *Iohn*) became about their times

App. at Emile,
Lenten part. 10.
cap. 26.

to be, it seems, more out of vse, and possessed rather by Ecclesiastique iurisdiction. Neuer thelesse in the sundrie ages since, the determination of the right and payment of Tithes hath been subiect to the temporall Courts, by diuers kinds of originall proceeding, which for orders sake may be all comprehended in these Five. I. By *Prohibitions* touching the *modus* or Customs of Tithing, or other matter concerning the Kings right, triable only in his own Court, or the like. II. The Writ of *Right of Aduowson* of Tithes, wher to you must annex the writ of *Indicant*, that is but a speciall prohibition making way for the Writ of *Right of Aduowson*. III. By *Scire facias*. IV. By bare processe of command of payment. V. By the actions vpon the late Statuts of 32. *Hen. 8.* and 2 *Ed. 6.* For the first and last of these, because they are now both in common practice, and thence known enough in generall to every man, I abstain purposely to speak more of them; sauing only that for the first, out of the more ancient ages, I obserue somewhat by the way which may belong to the vse of the present. In 21. *Hen. 3.* when all the Clergie of *England*, in the Nationall Synod held at *London*, vnder *Osbo* the Popes Legat, made subplication to haue redresse from the King, of some grieuances, one was, *Quod iudices seculares non decident causas Ecclesiasticas in foro seculari &c. & utrum danda sint Decime de Lapidinis, vel*

¶ Vide *Florb.*
Nov. 27. fol. 90. N.

¶ *Annal. Turon.*
Monast. in Bibl. V.
CL. 16. 18m.
Oxon. fol. 100.
 1237.

Syluiceds, vel Herbagys, vel Pasturis, vel de alijs Decimis non consuetis. which shews that the temporall Courts also in those elder times, determined what was titheable or not, & so made prohibitions *De non decimando*, according to the Processes in *France* vpon their *Philippin*, and in *Spain* vpon the *Carolin*, and according to that note in the *Register* and *Fitzberbert* touching the Iustices determination of what is titheable, agreeing to this is a Case of 8. Hen. 3.

f Fol. 54. b.
e 2c. 3. fol. 53.

where in a prohibition was granted against a Parson that sued for the Tithes of Rent. But you shall haue it as it is in the Record. *Warwick. Ma-*

u Plach. & In-
quis. 8. Hen. 3.
in Aras London

gister *Eustachius de Cestreton* attachiatus fuit

rd respondendum *Hugoni de Lege*, quare

contra prohibitionem &c. trahit eum in pla-

citum in Curiam Christianitatis de Laico

seodo ipsius *Hugonis* in *Cestreton*; vnde Idem

Hugo queritur quod ipse exigit ab eo in Cu-

ria Christianitatis de certa pecunia pro Deci-

mis molendinorum, & certum pratum, scili-

cet tres acras prati, & præterea de Wareto

suo; & de terris incultis si illas locauerit ipse

petit Decimum denarium &c. Et Magister

Eustachius venit & defendit contra eum &

contra sectam suam, quod nunquam traxit

eum in placitum de aliqua re certa nisi tantum

de Decimis fæni & molendinorum sicut Deci-

mæ inde dari debent, nec aliquam acram pra-

ti petit nec denarios de molendinis, nec ali-

quid

"quid de Wareto vel terra nisi tantum garbas;
 " & ideo preceptum est eidem *Eustachio* quod
 " de nullo placito de cetero sequatur in Curia
 " Christianitatis nec de aliquo Laico feodo nec
 " de aliquo quod sit contra Coronam Domini
 " Regis. But, to leaue this and to go to the II.
 and III. and IV. courses of proceeding for
 Tithes in temporall Courts, which are not so
 obuiously known; for the II. touching the
 Writ of *Right of Admonition of Tithes*, and the
Indicavit. it hath bin cleer euer since the Statut
 of *Westminster 2. cap. 5.* and of *Circumspecte ag-
 ri*, both made in 13. *Ed. 1.* (this as well as the
 other long since being receiued into practice by
 the name of a Statut, and so called in Acts of
 Parlamente; although it were anciently reputed
 rather as an Ordinance made * by the King and
 Prelats) that if *A. Parson of Sale* (for examples
 sake) libell against *B. Parson of Dale* in the spi-
 rituall Court, for so much Tithes and Offerings,
 possessed by *B.* as amount to the fourth or a
 greater part of the value of the Church of *Dale*,
B. may haue him prohibited by an *Indicavit* di-
 rected to him and the spirituall Iudge, after
 which the Patron of *A.* hath no other remedie
 for himselfe or his Encumbent (what right soe-
 uer they haue) then to bring a Writ of *Right* in
 the cōmon Pleas, of the *Admonition* of that fourth
 part, against the Patron of *B.* in which Writ,
 the right of those Tithes must be tried by the
 com-

* 16. Ed. 3. in Ju-
 risdiction 28. &
 See *Costus Apole-
 gie* part. 1. pag. 57.
 & 2. & 3. *Par-
 lam. 25. Ed. 3. ar-
 tic. 62.*

common Law. and herewith expressly agrees the Statute of *Articuli Cleri*. and the reason is because that if the determination of this Plea should be allowd to the spirituall Court, then might the Patrons Aduowson of such a party be there lost by iudgement according to the Canons, whereas the right of Aduowson and Patronage of Churches or Tithes only belongs, by our ancient Laws and at this day, to the secular Court. Neither is the Writ so much of the Tithes as of the Aduowson of the Tithes; *Precipe A.* (so are the words) *quod reddat B. aduocationem Decimarum tertie vel quarte partis Ecclesie de C. &c.* And howeuer by the Canon Law the right of Tithes be meerly spirituall, and so not due to the Rector so much by reason of his presentation from the Patron, as of the common right challenged by the Ministerie (whereupon also *Lindwood*, like a Canonist, thinks it not preiudicall to the Patron, which way soeuer the Tithes alone be determind of, in regard that all the Patrons interest is, hee saies, originally in the foundation, building, or endowing of the Church with Manse, Glebe, or Rent, and hath no relation to the Tithes which by common right are receiued without his Donation) yet by reason it seems both of our ancient practiced Law of Dotation of Churches by arbitrarie conueiances of Tithes, at the owners pleasure, in which doubtlesse Patrons very frequently increased the

H h h

a. *Tractat. Prælati
tit. de fidei compo-
sitione. C. cum p
de. vel. quarta
part.*

b. *Videbis. Mat.
Pau. pag. 716.
Bul. 10.*

the revenues of foundations with the Tithes of their Demefnes; as also of that other ancient use of Inueftiture; wherein the very interest of all the Glebe, Tithes annex; and other reuenues, was transferd into the Incumbent by the Patron; it was thought fit that the Aduowson of the Tithes alone should be equally reputed; for what concerned the Patron, with any other part of the Churches reuene. And the Law hath been cleer thus, and so still practiced. Since the Statuts before cited they permit not the spirituall Court to hold Plea of Tithes of the value of the fourth part, where the Patronage is questionable; but will haue the Aduowson thereof tried alwaies by the common Law after the prohibition of *Indicauit*, which (being purchased as well at the suit of the Patron as of the Parson) recites that the Parson defendand in the spirituall Court *Tenet a medietatem* or *quartam partem omnium Decimarum* prouenientium de &c. de aduocatione of the Patron &c. And then, *Quia manifestum est quod predictus* the Patron *iacturam aduocationis Decimarum predictarum* incurreret si *predictus Rector in causa illa* (that is the Parson plantif) *obtineret*; *vobis probibemus ne placitum illud teneatis in Curia Christianitatis donec discussum fuerit ad quem illorum pertineat earundem Decimarum aduocatio*. And then according as the right shall afterward be tried in the Writ of right, the spirituall Iudge is to giue sentence.

The

e 7. Ed. 3. fol. 42. b
2. Ed. 3. fol. 50. a.
Regist. Orig. fol. 29. b
38. Ed. 3. fol. 12. a.
26. Ed. 3. tit. Quia
reimpedit 147.
38. Hen. 6. fol. 20. a.
Fitz. N. B. fol. 30. e
Sergeant. fol.
108.

4. 31. Hen. 6. fol.
24. b. & 25. fol.
26. ff. de Re
iudicat. cap. 4.
fol. 40. 3. a. de
Fitz. N. B. fol.
45. D.

e 7. Ed. 3. fol. 42. b

and H

The same Statutes allow, to the spirituall Iurisdiction, one fifth of the fifth, and of all parts lesse then a fourth of the value of the Church in tithes controuerted twixt two Parsons, and no Inducement is grantable to forbid the suit of one of them, commenced for any lesse part, in respect of the Patrons right only. Neither vpon them, by consequence, hath any Writ of right of any part of Tithes that appears not to be a fourth part of the Churches value, been allowable. But, for this point; how the Law was before those Statutes of 13. Ed. 1. is a great question in our yeer books, and diuers are the Opinions touching it. Some think that before the Statute of West. 2. cap. 5. (out of which, ioind with *Circum-Ipecte agaris*, they limit the Inducement to the fourth part) no Writ of right of Aduowson of any Tithes lay by the common Law. Others thinke that before that time a Prohibition or *In-ducant* lay vpon euery suit in the spirituall Court for Tithes, and that the Patron might haue had his Writ of right vpon such prohibition against the suit of his Encumbent, either of a fifth or sixth part, and that these Statutes restrained him to the value of the fourth part at least. Others haue herein other fancies. But, it is plain first, that long before those Statutes, Tithes were demandable, of the owner detaining them, of their own nature, and pleadable, in the spirituall Court. and that affirmed in *Fleta*, was regularly

1. *Ant. Clari.*
cap. 2.

2. 13. Ed. 1. 10.
Brief 823. & R.
2. Orig. fol. 29. b.
Vide *Finch. Nar.*
Br. 45. D.

h. Moile 38. Hen.
6. 20. a. *Forse.*
31. Hen. 6. 24. a.
3. *Orig. fol. 107.*
& voyer 13. Ed. 1.
19. a. 16. Ed. 1.
107. *Quare impe-*
dit 147.

i. Markham 38.
Hen. 6. fol. 20. a.
& *Penn. 4. Ed. 1.*
fol. 27. b.
k. *Orig. fol.*
29. b. *Forse. 38. Hen. 6.*
fol. 20. a.

1 *Fleta lib. 6.*
cap. 37.

* *Loh. 5. d. Excepti-
onibus cap. 4. fol.
401. & cap. 30.
fol. 407.*

larly before true: *Decime* in quantum *Decime* (it suits against the Parishioners) *debent in foro Ecclesiastico intentari*, wherewith *Bracton*, * li-
ving in the time of *Henrie* the third, also agrees. But it is as plain that before those Statuts, if the
Rectors of two Churches of severall Auowries, had controuerted the right of a fourth part (or
of the value of either of their Churches more) in
Tithes, by suit commenced in the spirituall
Court, the Patron of the Rector-defendant
might haue had an *Indicauit*, to prohibit the
prosecution and holding of the Plea. *Bracton*
teaches vs that; and hath the forme of the Writ
to the same purpose, and giues his reason, *Quia
posset Patronus, iacturam sue aduocationis incur-
rere*. But somewhat doubtfully he limits the quan-
tity of the Tithes to the sixt part at the least, be-
yond which denomination the *Indicauit*, hee
thinks, lay not for any part. His words are: *Si
contentio fuerit inter Rectores de aliquibus Decimis
que estimari possunt vsque ad quartam, quintam,
vel sextam partem aduocationis, ultra quam par-
tem non extenditur prohibitio ut videtur, tunc fiat
Iudicibus (Ecclesiasticis) Prohibitio in hac forma.
Rex talibus Iudicibus salutem. Indicauit mihi &c.*
But he mentions no Writ of right of Aduowson
of Tithes that should follow. Hee saies indeed
that vpon the *Indicauit*, by consent only of the
Patrons, there may be an enquest taken (the Ju-
rie being returnd into Court by *Venire facias* or
Distringas

Disfringat had by petition of them so consenting) *tantum de Aduocatione*, to find *Utrum talis presentatur a tali Patrono* recenſer fuerit in ſeiſina de talibus Decimis *tantum ſpectantibus ad Eccleſiam ſuam quam tenet de preſentatione talis Patroni ſui*, vel ſi talis alia perſona inde fuit in ſeiſina tali tempore *ut de Decimis ſpectantibus ad Eccleſiam ſuam talem quam tenet de aduocatione talis Patroni ſui*. But how euer Bracton's owne opinion (yet doubtfully) be, that the Indicia might bee brought for the fixt part, and for no leſſe; yet, it ſeemes, the praſtice of the age was otherwiſe. and that no determination was in his time, nor before 13. Edw. 1. of any certaintie therein; which is expreſſely deliuered in the Grievances comprehended in the Nationall Councell of London in 21. Hen. 3. where all the Clergie entreated Oſbo the Popes Legat, that hee would perſwade the King to alter and correct certaine proceedings, *que fuerunt in regno Anglia in preiudicium libertatis Eccleſiaſtica*; among which, one is, *Item ne currat prohibitio* (you muſt vnderſtand the Indicia) *Ne Iudices Eccleſiaſtici cognoscant de iure Patronatus quominus Clerici poſſunt petere Decimas tantum de iure Communi ad Eccleſias ſuas pertinentes. Quia Patroni Eccleſiarum vel Capellarum que Decimas petitas poſſident, dicunt per talem petitionem Iuri Patronatus ſui derogari, & nolunt Iuſticiarij Domini Regis Iudicare quata*

[Faint, illegible handwritten text]

in Social Service
in British V.C.
Thema Allen
Oxon.

pars Decimarum peti possit vel debeat eam In-
dice Ecclesiastico. And another, *Item ne curras*
prohibitis Domini Regis, ne Rector Parochialis Ec-
clesiæ impetret cor qui percipiunt Decimas infra
limites Parochiæ suæ. By both which, compared
 with the ancient Bookes, it appears, that the
 Kings Prohibition lay commonly, if the Aduow-
 son of the Tithes were between two persons que-
 stioned, and that also (for aught occurs to the
 contrarie, except *Bracton's* coniecture) if any
 part of the Tithes or the Aduowson (which in
 such a suit were reputed as one) had been con-
 trouerted. To these testimonies may be added
 this, in the Epistles of the most learned *Robert*
Grossetest Bishop of *Lincolne* vnder *Henrie* the
 third, whereby the course of *Indignitas* is proued,
 and also taxed for iniustice against the libertie of
 the Church. Thus is it spoken of among other
 "grievances of the Clergie. *Item in Ecclesiæ*
 "libertatem non mediocriter delinquitur, cum
 "Iudices Ecclesiastici, ne causas quas notum est
 "pure esse Ecclesiasticas in foro discindant Ec-
 "clesiastico, à domino Rege prohibentur. Ut
 "per literas Regias inhibetur ne Iudex Ecclesi-
 "asticus iudicialiter cognoscat utrum Ecclesia
 "vel Capella talis loci sit Capella Matricis Ec-
 "clesiæ alicuius alterius loci, & utrum Decimæ
 "talis terræ ad hanc vel ad illam pertineant Ec-
 "clesiam, eò quod si Actor in huiusmodi causâ
 "euincat possessionem, Ecclesiæ Rei contingeret
 "immi-

Chap. 74

"imminui ac per consequens, ut aiunt, ius Patro-
 "natus eiusdem Ecclesie deteriorari, Ecclesia
 "ad quam Patronus presentabat effectum minus
 "pingui. Accideret namque ratione consimili,
 "omnem causam super possessionem vel quasi
 "possessionem Ecclesiasticam inter duos Rectores
 "duarum Ecclesiarum diversorum Patronatu-
 "um emergentem, ne ventilaretur coram iudi-
 "cibus Ecclesiasticis a domino Rege debere
 "prohiberi, eo quod Actore in huiusmodi causa
 "euincente, contingeret semper Ecclesiam Rei im-
 "minui ac per hoc, secundum quod dicunt, Pa-
 "tronatum eiusdem deteriorari. Consequetur
 "autem & sic quod huiusmodi causa Eccle-
 "siastica nunquam discinditur. A seculari
 "enim iudice discindi non poterunt, neque ab
 "Ecclesiastico iudice, obstante Regia prohibi-
 "tione. Fortè autem nec consequitur quod in
 "huiusmodi casu, euincente actore, imminue-
 "tur Patronatus alterius Ecclesie. Non enim
 "minus est Patronus qui minoris Ecclesie est
 "Patronus, sed nec minus est pater qui minoris
 "hominis est pater. Patronatus enim seu ius
 "Patronatus non intenditur vel remittitur ex
 "maioritate vel minoritate rei cuius est Patro-
 "natus. Præterea sed tubera & ea quæ contra
 "naturam excresecunt in carne hominis non au-
 "gent ipsum hominem, & medicinalis abscissio
 "innaturalium huiusmodi excrementorum ip-
 "sum hominem non imminuit sed potius pul-
 "crificat.

"crificat & sanat. Ita iniuste possessiones &
 "quasi possessiones Ecclesias ipsas non augent
 "sed deturpant, & earum abscissio per iustum
 "iudicium non est Ecclesiarum imminutio, sed
 "potius pulchritudo quædam & sanatio; unde
 " & Patronatus seu ius Patronatus per huius-
 "modi abscissionem nullo modo potest immi-
 "nui vel deteriorari, sed multò ampliùs emen-
 "dari. I faithfully relate it, and censure not
 the Arguments. You may doe that, Reader,
 while you smile at the *Magis* and *Minus* in it. But
 also, although the *Indicavit* prohibited the
 Spirituall Court, yet it seemes the Temporall,
 before the Statute of *Westminster* 2. and after the
 time of *Henry* the second, or thereabouts, held
 no Plea of right of Aduowson of Tithes, except
 only vpon Inquest taken by consent of both Pa-
 trons. something, as you see, might be tried in it.
 May we not conclude then, that the same Statute,
 in those words, *Habeat Patronus Rectoris sic im-*
pediti breue ad petendum Aduocationem Decima-
rum petitarum, was the first Autor (at least after
 the change about the time of *Henrie* the second)
 of the Writ of Right of Aduowson of Tithes?
 Which also is well iustified by the pleading of
 the Abbot of *Selbies* case, within six yeeres after
 the Statute, wherein the parties (according to
 the fashion of argument in pleading of that
 time) agree, • *Quod breue de quarta parte De-*
cimarum primo locum habere cepit à tempore Sta-
tuti

1111 Regis nunc apud Westmonasterium inde editi.
 &c. Neither rests any scruple, touching the
 fourth part, why the Prohibition in the Indica-
 uit and the Writ of Right, should bee of the
 fourth part only, or of a greater, although the
 Statute of Westminster 2. speak of no certaine
 part. For, that of *Circumspecte agatis* ordaines,
 That no Prohibition or Indicaui should lye,
 where the part controuerted is lesse then a fourth
 (it being before grantable vpon such suit for a
 sixt part, by Bracton's opinion; and it seems In-
 deed, vpon suit for any part) and the Statute of
 Westminster the 2. giues the Writ of Right only
 where the Indicaui is first sued. And for this
 matter of Indicaui (which concernes properly
 suit between Rector and Rector, not between the
 Rector and the Parishioner) take as a note by the
 way the aduice of the Bishops among themselves
 in 41. Hen. 3. against the Temporall Courts. In
 the Annales of Burton it is extant, & thus speaks.
Concilium Archiepiscopi & omnium Episcoporum
super Articulis propositis apud London. Petri per-
sona Ecclesiastica Decimarum coram Iudice Ecclesi-
astico. Iudicanti & petenti porrigitur Regia Pro-
hibitio nomine Patroni Ecclesie cuius Rector con-
uenitur, ne super Aduocatione seu Patronatu Ec-
clesie Iudex ille cognoscat; si actor prosequatur &
*Iudicanti officium * assumat, uterque attrahatur*
& attrahiani veniunt Consilium tale est; quod si
Iusticiarij causam Decimarum sub colore querela
Aduo-

Aduocationis Ecclesiarum ad se trahere velint & de non proseguenda vltima causam Decimarum in foro Ecclesiastico & Iudice siue a Parte securitatem exigunt, in nullo eis caueatur. Et si propter hoc ariscentur, per loci Diocesenum requirantur siue per Episcopum proprium. Et si libere non tradantur Ecclesia, competenti monitione premissa excommunicentur Iudicantes & detentores. Et si queratur a Iudice quota pars vel quanta petatur, non respondeatur. But this aduice of theirs was to little purpose; nor durst they, questionlesse, haue put it in execution. The Statuts of Westminster the 2. and *Circumspecte agatis* gaue them some remedie; whereof enough alreadie.

IV. Of Writs of Scire facias, graunted to call men to answer in the Chancerie for Tithes, sufficient testimonie is in the Statute made for the Clergie in 18. Ed. 3. chap. 7. Item que per la ou briefs (so are the words) de Scire facias eient esse grantez a garnir Prelates, Religieuses, & autres Clerks a respondre des Dismes en nostre Chancellerie & a monstre s'ils eient riens pur eux ou fa- cident riens dire pur quoy tielx Dismes a les demandants ne deuiant estre restituees & a responder auxibien a nous come a la partie de tielx Dismes &c. By this it appeares, that some vse was to graunt such Writs for Tithes. Whence also *Fitzherbert* well inferres, that the right of Tithes was determinable in the Kings Court. But wee haue not in our Yeere-Bookes any case of

of further declaration of that vse before the Statute. But out of good ground you may coniecture, that in these Three speciall cases, Writts of *Seire facias* were grantable anciently for Tithes, and that in those times, before the Statute; either vpon the title of the demandant, first found by *Inquest*, to the Tithes, or returnd by the Shirife; or out of *Fines*, it seemes, leuied of Tithes; or vpon *Patents* of Tithes legally graunted by the King, when, against the Grant, any Clergie man by the Canon Law took them from the Patentee. Of all these, there is faire proof enough. But the third (it seemes) hath principall reference to that Statute, as shall anon be shewed. For the course of taking an *Inquest* by commission, which being returnd, might be sufficient ground for a *Seire facias*, it appeares in *Escaet. 8. Ed. 1. numer. 67.* that a commission was sent to *Adam of Eueringbam*, Steward of the Forest of *Shirewood*, to enquire by Oath of the Foresters and Verderors, whether the Priors of *Lenton* had vsed to haue all Tithes of the Kings Venison, taken in the Countie of *Notingham*, which they claimed per *Cartas quorundam predecessorum &c.* And in the Inquisition returned, it is found, that they had vsed to haue it, and that first by the Grant of *r King Lbn.* And in the same bundell, *num. 72.* a Commission is to *Nicholas of Stapleton*, commanding him to enquire, whether the Prior of *Wyke* ought to haue the Tithes of all pro-

fits of the Mannor of Gringelej, Nobis super iure Prioris in hac parte & facta contrarie (that is, the subtraction of them by Henrie de Alemannia, against whom the Prior complained) certiorari volentibus &c. Whereupon the Commissioner returns, that the Priorie had right by prescription, and that Henry de Alemannia had subtracted them. What could be more proper, then to have a Scire facias upon the Inquisition, according to the intent of that preamble of 18. Ed. 3. in which Scire faciat, the right might be tried between the parties, and so judgement be given? To these may be added that in *Inquis. ad quod damnum* 8. Ed. 3. num. 79. Where, per Petitionem & in Consilio, the Abbess of Godeslow hath a Writ directed Custodi equitij sui de Woodstock &c. which relates that ex parte dilecta nobis in Christo Abbatissa de Godeslow per petitionem suam coram nobis in Consilio nostra exhibitam, nobis est ostensum quod cum per cartas progenitorum nostrorum quorundam Regum Anglie Concessum sit ei, quod ipsam Decimam omnem in Manerio nostra de Wodestoke, & parca nostra ibidem per annum renouantium percipiat & habeat, preteritum eius. the Abbess and her Predecessors had enioied it, and that the Bailife kept from her the Tithe of the Colts, bred in the same Park; wherefore it commands him to restore them if they be so due; which supposes, I think, that he should return an inquest or some discoverie of the truth

¶ Videis Ra.
Parl. 2 Ed. 3. cap. 23

¶ Vide, si placeat,
Ra. Claus. 21.
Hen. 3. membr. 19.

or falshood of the Plaintiffes pretence, although indeed this example may serve also for that part of our diuision of this kind of proceeding which touches *Patents*. But to that Writ is annext the return, that is, the Bailifes acknowledgment in *French* of her right. his name is *William Beaumais*. So in *Escaet. 7. Ed. 3. num. 83.* a Commission is sent out to enquire of the right of the Tithes of the Demesnes of the Kings Castle of *Tikbull*, which the Prior of *S. Oswald* claimed. the enquest was taken of it at *Le Faure Oket*, in the confines of *Torkesbire* and *Nottingham*. and in it the particulars of the right are returned. and what should want, that vpon such returns, writs of *Scire facias* might not have been granted. we omit that before cited out of the Parliament Rols of *18. Ed. 1.* And light also to this practice in the temporall Courts of that elder time, may be had from other Commissions or Processe in the Rolls, as from that sent by *Henrie* the third into *Ireland*, to the Archbishop of *Cassile*, the Bishop of *Ferne*, and the Bishop of *Lismore*, commanding them, that, taking with them *Ieffrey de Marisco* then Iustice (or Lord Deputie) of *Ireland*, or some other whom hee should appoint, they should enquire by the Othes of both Lay and Clergie men, whether *Bartholmew de Camara* Parson of the Chappell of *Limeric*, or *William of Caerdiff* Treasurer there, had seisin of the Tithes, *De Piscaria & Molendinis de Limeric*,

f. Par. Hen. 3.
part. 2. num. 103.

tempore Ioannis Regis Patri nostri ante guerram motam inter ipsum & Barones &c. But it may be also that these Enquests or Returns made of the Title to Tithes by the Shrise, were only in case where the Tithes increased out of the Kings Demesnes, or perhaps immediat Tenancies. The examples seem not to go further and in 2. 6. Ed. 1. a Petition was exhibited in Parliament by one Piers a Chaplain of the Earle of Savoy, against the Prior and Couent of Lewes, for a Tithe giuen him by the Prior and Couent in the Parish of Westun, in the Diocese of Ely, whereof another grant had been afterward made by them to one Richard de Meuton; and Piers beseeches the King to send his writ to the Shrise of Cambridge, to put him in possession; but this answer is indorsed. *Rex non intromittis se de hijs que taliter stellant ad forum Ecclesiasticum; sed prosequatur ius suum versus Clericum qui tenet Ecclesiam, coram Ordinario.* Here was an expresse exclusion of the Temporall iurisdiction in such a case, whete an originall Writ or Commission was commanded to setle or inquire of the right of Tithes, that toucht only common persons. But whenever through such means the title appeared vpon record, I vnderstand not why a Scire facias might not aswell be issuable (although I haue not met with an expresse example of that kind) as in the last course that is vpon the title appearing in Patents of the King or his Ancestors.

2 Jo. f. 10. Pet. 6.
Ed. 1. in Arto
Londin.

V. For that second ground of Writts of *Seire facias*, which we suppose to be *Fines*, leuied of Tithes; why was it not as likely that vpon such *Fines* leuied, Writts of *Seire facias* should lie as vpon any others of Lands or Rents. and that *Fines* of the right of Tithes were in the Kings Courts anciently leuied, is manifest: not as I remember vpon Writts of *Couenant*, which yet may (for aught I know) at this day be brought, in the temporall Court, for spirituall Tithes, in regard no Tithes but damages are only to be recovered; but chiefly in Writts of *Right of Aduowson*. For example, *In Fin. Trinit. 10. R. Iohannis Wilt. apud Windlesore coram ipso Rege, Simone de Pateshulle, Iacobo de Poterna, Henrico de Audemero Iusticiarijs & alijs Domini Regis fidelibus tunc ibidem presentibus.* vpon a Writ of right of Aduowson brought by *Ascelina* Abbessse of *Wilton*, against *Henrie of Abeny* for the Patronage of the Chappell of the greater *Wicheford*, the concord is, that the Abbessse grants it to him in Fee, saving a pension of two shillings yeerly to the Church of *Newton*, being
 “ a Prebend of *Wilton*. Et pro hac recognitione & quieta clamazione & fine & concordia
 “ idem *Henricus* remisit & quietum clamauit de
 “ se, & heredibus suis prædictæ Abbatissæ &
 “ Ecclesiæ sanctæ *Edithæ* Virginis in *Wilton*, &
 “ eiusdem loci conuentui, *all his right in certain*
 “ *Lands*, & recognouit & concessit omnes De-
 “ cimas

12. Edw. 1. fol. 10.
 & Reg. Orig.
 fol. 103.

"cimas de Dominico suo in maiori *Wicheford*,
 "esse pertinentes ad prædictam Ecclesiam de
 " *Neweton*, quæ est Præbenda de *Wilton* sicut
 " eas habere solet, excepta Decima bladi pro-
 " ueniente ex viginti acris terræ quas persona
 " prædictæ Capellæ elegerit de Dominico ipsi-
 " us *Henrici*. quam Decimam persona per *Hen-*
 " *ricum* prædictum, vel hæredes suos ad prædi-
 " ctam Capellam de *Wicheford* præsentata, &
 " admissa per visum personæ quæ prædictam
 " Præbendam de *Neweton* habuit, vel per visum
 " balliui eius debet recipere in autumno, sicut
 " ab antiquo recipere consuevit. The record is
 worthy of speciall obseruation. And in the Lei-
 ger book of the Priorie of *Merton* in *Surrey*, a
 Fine is of *Pasch.* 12. *R. 106.* before the King and
 the same Iustices, between *William* de *Castelupo*
 Defendaunt, and *Walter* Prior of *Merton*, vpon
 the right of Aduowson of the Church of *Eyton*,
 wherein it is agreed that the Chaplain of the
 demandants in *Eyton*, shal not take à *parochianis*
eiusdem Ecclesie nec in Decimis, nec in Oblationi-
bus, nec in Confessionibus &c. but leave them all
 to the Parish Church of *Eyton*. and in this, some
 may, as in the other, note the pretended interest
 of the Patron, in disposition of any of the Reue-
 nues of the Church. which anciently claimed,
 while Inuestitures continued, was not as yet o-
 mitted in these Legall proceedings or instru-
 ments, that is, Fines, which are of greatest curio-
 sitie.

stie, and according hereto is a Fine of 7. Rich. 1.
 leuled between the Prior of St. Andrew and Alice
 Hopson, of the Advowson of the Church of Chel-
 legb in Staffordshire, where Alice as Patronesse
 grants to the Priorie, among other things, *Omn-
 nes Decimas ville de Northmankote in perpetuum
 que est de eadem Parochia*, that is of Chellegb.
 and in the Chartularie of Guburn, in a Fine of 23. Hen. 3. between Peter de Brui plaintiff, and
 John Prior of Guburn (in the Province of York)
 defendant, *In droit d'Advowson*, Peter grants *pr-
 ius suum omnes Decimas superscriptas quas &c.*
 The like also doth he in a Fine of 26. Hen. 3.
 there transcribed. and in 30. Hen. 3. also, of
 which more particular mention is before made.

V I. But for Writs of *Scire facias* brought
 vpon the third ground, that is, in Case where
 the title appears vpon record in Parents made
 of the Tithes from the King or his Predecessors,
 take this speciall example of 17. Ed. 3. A Writ
 was directed to the Shrieve of Essex, relating
 that *Mande*, *Quondam Regina Anglia*, granted
 to the Deane and Canons of the Kings free-
 Chappell of S. Martins in London, the Chur-
 ches of Witteham and Chersinger, *Cum Capellis
 & Decimis &c.* and that they were thereof and
 of the Tithes of Witteham and Chersinger, seised
 till 16. Ed. 2. and that since the Abbot of Saint
 Johns of Colchester took from them two parts of
 the Tithes &c. *Et quia nos omnia & singula*
“ iura

iura libera Capella nostra supradicta mand-
 tenere volumus & tenemus, & ea que substra-
 ta fuerint siue iniuste occupata reuocare, tibi
 precipimus quod scire facias nunc Abbati
 quod sit in Cancellaria nostra in quindenam
 S. Iohannis Baptiste prox. futurum ubicunq;
 tunc fuerit ad respondendum tam nobis quam
 prefatis Decano & Capitulo de usurpationi-
 bus, occupatione, & detentione dictarum dua-
 rum partium decimarum predictarum & ad
 ostendendum si quid pro se habeat vel dicere
 sciat quare dictæ duæ partes Decimarum ea-
 rundem eisdem Decano & Capitulo adiudi-
 cari non debeant, & ad faciendum & ad reci-
 piendum ulterius quod curia nostra conside-
 rauerit &c. teste &c. apud Westmonast. 17.
 Iunii anno regni nostri 17. Per Regem & Con-
 silium. This Writ was returnd with Scire fe-
 ri by H. Garner Shrie of Essex, and by consent
 of the parties it is referd to *Misbelmas Terme*
 following *In Statu pro nunc.* the Writ is both
 in part 1. and 3. of that yeer, but to that in part
 3. which is of *Trinitis Terme*, a Plea of the Ab-
 bots is annext in these words. Et prædictus
 Abbas per atturnatum suum dicit quod præ-
 dicti Decanus & Capitulum per breue suum
 non supponunt quod Ecclesie de *Wutebam*
 & *Cheresinges* sunt de fundatione dictæ liberæ
 Capellæ Domini Regis, sed quod illas Eccle-
 sias tenent de dono *Marilde* quondam Regi-

" na Angliæ post fundationem dictæ libere Ca-
 " pella, & dicit quod tempore doni, prædi-
 " ctæ Ecclesiæ fuerunt in iurisdictione ordina-
 " riâ videlicet Episcopi London, & continuè
 " post donum hucusque fuerunt & adhuc sunt in
 " præsentem in iurisdictione ordinaria. Et dicit
 " quod prædictæ Ecclesiæ fuerunt visitabiles &
 " visitatæ per Episcopos London. in visitationi-
 " bus suis à tempore à quo memoria non extat.
 " & prædicti Decanus & Capitulum per breue
 " suum petunt decimas quas supponunt esse par-
 " cellam earum Ecclesiarum quæ sunt in iurif-
 " dictione Ordinaria in forma prædicta, & sic
 " Decimæ illæ sunt merè spiritalia & non pla-
 " citabilia nisi in curia Christianitatis; per quod
 " non intendit quod Curia ista in hoc casu cog-
 " nitionem habere debeat. Here it appears,
 " that the Counsell of the Abbot of Colechester De-
 " fendant, supposed that the consist of the Tithes
 " was spirituall only, vnlesse they were originally
 " part of the Kings free Chappell. how the Case
 " was determined, appears not. But in the next
 " Parliament following was a Petition exhibited
 " by the Clergie in those words before cited &
 " IV. complayning of the granting of such Writs
 " of Scirefacias, and vpon that Petition the King
 " answered, *Quelz brevis desore nauant ne soient*
 " *grantes, & que les Proces pendant sur quelz brevis*
 " *soient anentes & que les parties soient dismisses de-*
 " *uant secular Iudges de quelz maniere de Plees salue*
 " *raison*

*a nous n'estre d'ou tuel come nous & n'estre aduersors
auient eue & folent aue de reson. I think we
need not doubt but that this very Case of the
Abbot of Colchester was no small cause of that
Petition of the Clergie. and you see mention is,
in the answer, of some Writs hanging, whereof
this is most likely to haue been one. But howe-
uer the Petition was answered, and although
out of this Petition and answer that Act of 18.
Ed. 3. hath been receind among our Statuts,
and commonly goes for one, yet might it de-
serue further consideration then I will here seem
to take of it. only I admonish that within foure
yeers after, a *Scire facias* was brought by a
Patentee of Tithes in the Forest of Inglewood,
and that against a Prior being Pernor of them;
and by iudgement the Writ was allowd without
mention or the least regard had of that Act. why
that was so, or what force the Act hath, let others
examine; I purposely abstain.*

VII. But for Proceffe of bare command of
payment of Tithes, or the like; when the title
was by Parent clearly supposed true, the Shrieff
or other Officer was sometimes commanded by
Writ to take order that the demandant might
enjoy his Tithes. As in *Claus. 7. Hen. 3. par.*
1. membran. 6. the King directs his Writ to
Brian de Insula Keeper of the Forest of Shire-
wood, telling him, that *pro salute anima Do-*
mini Ioannis Regis patris nostri concessimus Mo-
nachis

e In Arce London.

f Pat. 16. Hen. 3.
m. 17.

(although those Tithes were most commonly settled in one Church or another by Grant) as may be seen in Mich. 9. & 10. Hen. 3. Rot. 15. where John Fitz Robert, in an Attachment vpon a Prohibition against Philip of Arden Clerk, in the pleading allows, that for Tithe of Hay and Mills, the prosecution in the Spirituall Court was lawfull; but hee further sayes, that *de Decima Bestia Foresta cum implacitauit contra prohibitionem &c.* And herewith may be considered also the Kings command, sent to the Constable of Windfore Castle, that the Church of Saint Iohn in Windfore should haue *Decimas Gardini Regis de Windlesbores*. But out of these all (as out of the examples before brought of Commissions to be returned) it may perhaps be collected, that only the Tithes of the Kings lands, or belonging to his Churches, were to be ordered or commanded to be paid by these kind of Processes. I confesse I haue not seene enough to perswade me otherwise, for the time after about King Iohn or his neere predecessors. Yet, that as I leave the iudgement of all, which historically I relate to the able Reader, so I may not defraud him of what in any kind may give light; here I offer him also this Writ of 24. Hen. 3. that seems to touch the temporall Courts determination of the right of such Tithes, as, for aught appears, belonged neither to the Kings Churches, nor were encrea-

sing

ling in his Demefnes or immediat Tenancies.
Henricus Dei gratia Rex Anglia & Vicecomiti
Hertford salutem. Licet aliter tibi significauerimus
quod non permitteres Ecclesiam de Hamelamstede
spoliari Decimis ad ipsam pertinentibus; & quod
Ecclesiam ipsam manuteneres; & defenderes in eo
statu in qua fuit tempore Syluii quondam Rectoris
eiusdem Ecclesie, non tamen fuit intentionis nostre
quid occasione illius precepti aliqua alia Ecclesia
Decimis suis spoliaretur. Et ideo precipimus quod
occasione illius precepti nullam violentiam inferas
vel inferri permittas Monachis S. Albani super
Decimis spectantibus ad Ecclesiam suam de Red-
burne quas per XX. annos haecenus pacifice pos-
siderunt. T. m. i. i. f. o. apud Westm. Idie Septem-
bris an. r. n. XXIV. And in like forme was a
Writ sent to the Constable of Berkhamstede.
But this kind of Processe, and all other such
Writs of *Seire facias*, either vpon Commis-
sions returned, Fines, or Patents, or otherwise,
(for aught I could yet learne) haue long since
ceased, by reason especially of that receiued Act
of 18. *Ed. 3.* Neither since that one case of 22.
Ed. 3. as I ghesse, hath any vse been of an origi-
nall suit for Tithes in the Temporall Courts,
sauing only vpon Prohibitions and the Statutes
of 32. *Hen. 8.* & 2. *Ed. 6.* I say, originall suit.
for otherwise, the question of the right of Tithes,
incident in an Issue at the Kings s. suit, hath
since been triable in the Temporall Court; and
be.

AFTER some few Copies, thus halfe printed and halfe written, were dispersed, and since the various Censure of vnequall Readers; (some of them caulling at such Passages in it, as the Autor at first thought, and not without cause, had been enough cleared) this short Renew is now added; wherein, beside some other Confirming and Declaring Authorities, by the way also, and opportunely enough, occurre some Admonitions briefly offered, that may somewhat direct in the Vse of this Historicall truth. The printed sheets could not be increased, or altered. neither was it so fit, after many hands had the whole, that Additions inserted, should make any variance from the written part. And plainly, that of the Admonitions, for direction in the Vse, of its own nature rather required a severall place, then was fit to haue been mixt in the bodie of the Historie. In the name therefore of Goodnesse and Learning, I earnestly beseech every one, that hereafter shall get it either Copied or Printed, to ioine also (if bee may) this Renew with it.

Of the I. Chapter.

IN the I. §. touching that of *Abrahams* Tithes being of the Spoiles of Warre only; I know many think otherwise. And beside the generall name of *Tithes* of all, reasons are drawn for their side out of those words of the Patriarch to the King of *Sodom*; I will not take of all that is thine so much as a shred &c. I neither profess to dis-

a Vide *Tran. Invi-*
mus Anals. Cr-
ist. cap. 14.

b Consulas *E-*
ucherium Lugdun-
Genes. lib. 1. cap. 17.
& 18 & D. Am-
brus in Epist. ad
Ebraos, cap. 7.

c Ad cuius inter-
pretationem ex-
am consule, si pla-
cet, *Posthanc ad*
Olyss. T.

d In lib. *epi-*
st. ad Rom.
cap. 11. v. 17.
et 18. v. 27.

e Lib. 2. in *Genes.*
cap. 25. & 27.
f *Tom. 1. hist. lib. 1.*
cap. 41.

g *Hieronym. tom.*
2. in Epist. ad Ro-
mos. & Eucher.
de civitate &c.

h *Epiphanius in*
hæres. 55.

i Autor *cu-*
Midras hagadeb
apud Rab. Isaac
in Genes. 14. &
aliq. obs. item Ab-
dras in Psalm. 76.
apud Galatin. de
Arcah. lib. 1. c. 9.
quem & vide
lib. 10. cap. 6.
& D. Ambros. lib. 3.
de fide cap. 5. Hier-
onym. & Epiphani.
vbi supra. & hæres.
67.

dispute it, nor find I any such consequent out of that Text. And the answer to the objection is not difficult. But I adde here to those testimonies both of *Jews* and ancient Fathers which I have cited, (for I was willing to make their testimonies my warrant, not to glosse the text with my owne interpretation, or with the fancies of perie names) that *S. Ambrosius* and *Eucherius* Bishop of *Lyon* call those Tithes also *b Decimas prædæ & victoria*. And in one passage, *Eucherius* having a plaine regard to the words of the Epistle to the *Ebreus*, which in the vulgar are exprest by *Decimas de præcipuis* (for the Greek *δεκάτην ἐκ τῶν ἀποδιδόνων*) says *de præcipuis prædæ Abraham Patriarcha Decimas legitur obtulisse*, directing himselfe still in the conceit of the word *tit* in *Genes*, according to that *ἀποδιδόναι* in the holy Epistle, which both in Translations enough, and in the Greek & Prouerbe before remembered, denotes spoiles of Warre. Yet also the same Father soon after calls them *Decimas omnia substantie sue* generally; but plainly shewing in his former words, that he took *omnia substantie* here for nothing but *victoria prædæ*. Which, it seems, *Philo* the Jew also understands, where in his Antilogical course of contemplation he saies that *Abraham* being the tenth degree from *Sem*, *Τὸ δὲ δέκα δὲ ἀνά τεταρτάκις τῆς Νύκτος ἀπαριθμῶν*, that is, consecrated Tenth to the Almighty, as a thanksgiving for his victorie. And *Primasius*, and old *African* Bishop, interprets *de præcipuis* in the Latine text by *de melioribus spoliis*. But some have quilled at my relating, according to *S. Hierome*, that were it not for the holy authentic of the Epistle to the *Ebreus*, it might stand indifferent whether *Abraham* gave Tithes of the spoiles to *Melchisedek* as to a Priest, or *Melchisedek* the Tenth of his estate to *Abraham*, as a portion to one of his posteritie. If there be a fault in that assertion (I confesse I find none) let them be so bold then as to tax those learned Fathers for it, *S. Hierome* and *Eucherius*, beside *Preacypius* Bishop of *Lisieux*, and other ancient Writers, that in the same Syllables affirme it with *S. Hierome*, from whom indeed *Eucherius* transcribed the best part of his more notable passages. Somewhat may be here fitly remembered concerning two Adjuncts that belong to this Storie of *Abraham* Tithing, that is, who *Melchisedek* was; and where the place of his Kingdome, or *Salem*, was. For the first, such of the Fathers as out of the *Ebreu* text had the true notes of supputation of time, take him to be *Sem*, according as the opinion also was generally receiued among the old *Samaritan Ebreus*, and diuers *Jews*; also especially of later ages: howeuer some *Jews* have been long since of another opinion, in their idle and rash fancies supposing him to be a bastard, which they took to be the cause why his descent is not spoken of with his name: others of them, with the *Hieracites*, making him more then a man. But also both the *Hieracymitan Targum*, and that other called *Ben-Uziel*, expressly tell

22, he was *Sem* the sonne of *Noah*; which some of late times have
 in Works purposely written to that end, laboured to make manifest.
 And doubtless, at the time of the yfcurie, *Sem* was the chiefest of the
 familie there; and either a First borne also, or eldest in him the right
 of a first borne or Priesthood, by translation from his elder brother;
 which I adde, because the *Rabbins* and divers others of the learned
 will have it, that *Iaphet* was the elder brother. But how stands that so
 well with *Melchisedech* being *Sem*, if according to that old tradition,
 both among *Rabbins* and *Christians*, the Priesthood were an incident
 to the first borne male? Vnder the right of Primogeniture were
 transferd from *Iaphet* to *Sem*, in *Noah's* blessing, as it was to *Isaac*
 from *Esau*, and from *Cain*, it seems, to *Abel*, which must be thought
 also in the taking their side, who suppose *Abraham* not to be the el-
 dest of *Terah's* sonnes. For regularly the Ancients give the Priesthood
 before the Law to the first borne. And whereas *Moses* is said to have
 sent young men that offered burnt offerings, the *Chalde* Paraphrase
 have for *שְׁלֵשִׁים אֶבְרָהָם יְעֹזֶרֶת* *young men*, *שְׁלֵשִׁים אֶבְרָהָם יְעֹזֶרֶת*, of
 the first borne; these *3. chrysolites* elegantly stile *יְעֹזֶרֶת* *au-
 xiliaries*, that is, *Priests of themselves*, or made without other ordina-
 tion or Suffrages; to which Office also (who had either by birth, or
 blessing, that equall'd the birth) a kind of a Imperiall and Patri-
 archique dignitie was annexed. That precedence of birth given to
Iaphet, is of no late inuention; but many hundred yeeres antienter
 then the *Talmud*, or any worke extant of any *Rabbin*. For the *Septu-
 agint* expressly affirme it, *הָיָה יָפֶֿתְךָ בְּרֵֿאשִׁית הָאֲדָמָה* *he was first
 borne* to *Sem*, being father of all the *Hebrews* of *Eber*, and brother of
Iaphet, being the elder, which in the *Hebrew* is not so plaine on either
 side: for, the words being *הָיָה יָפֶֿתְךָ בְּרֵֿאשִׁית הָאֲדָמָה* *Iaphet* *being*
 reason of the want of terminations of cases, may be alone as well
 turned elder brother of *Iaphet*, as brother of *Iaphet* being the elder, which
 in the last *English* translation is brought nearest to the Originall,
 thus: *וְהָיָה שֵׁם הָאֵלֹהִים הָאֲדָמָה בְּרֵֿאשִׁית הָאֲדָמָה* *the brother of Iaphet the elder, even to him were*
children borne. And besides such interpretation of the context, the
Chronological part of the holy *Scripture* affords much to prove, that
Sem was not the first borne in time. For *Noah* was *1. D.* yeeres old,
 and got *Sem*, *Ham*, and *Iaphet*. *Sem* : two yeeres after the Flood, be-
 ing *C.* yeeres old, got *Arphaxad*; that is, (as is most probable, if not
 plaine) in the *D.C.* *11.* yeeres of *Noah*, *Sem's* age was only *C.*
yeeres. Then at *Sem's* birth, *Noah* was *D. 11.* yeeres old. Who ever
 therefore was borne when he was but *D.* yeeres of age, must be *C. 11.*
 yeeres old, when *Sem* had scene only one *C.* yeeres. If any of them
 were borne in *Noah's* *D.* yeeres (as the Text seemes to teach) it must
 then be one of the other two, and not *Sem*. This argument, vsed by
 the Jew and others, which follow them here, joind with what is in the

I Nam esse Rab.
Maurum Genteni-
am notat D. Kan-
els in rad. 57
dia & Iovti ad
Gimp. 10. 11.
in Gimp. 10. 11.
in Gimp. 10. 11.
n Vide Phisom
2501 APLA 7
o Rad. cap. 14.
Gimp. 10. 11.
Gimp. 10. 11.
Gimp. 10. 11.

p In Gm 1872.
videtur Easchiam
in Gm. 1872. 2. 6.
25. 6. 17.
9. 1872. 1872.
1872. 1872.

r Genf. 10. 31.

[Faint handwritten text]

1940

with the following:

(Conf.)

8. Ibid., 13.10.

u Vide Mid. c. 7. d.

z In Elanch, Orat.
Chromoz. Dan.
Paro pag. 35.

y In lib. xxiij.

Alpach.

z Epist. ad Sagra.

z In Epist. ad Ebr.

z In Epist. ad Ebr.

z In Epist. ad Ebr.

z In Epist. ad Ebr.

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z In Epist. ad Ebr.

Septuagint for *Iaphet*, makes so much against *Sem's* being the first born, that however the great *Joseph Scaliger* be most confident, that he was first in birth, as his name is express in enumeration, and gives his answers to the *Chronologie* objected against it; yet you may with more probability take the more common and ancient opinion, that makes *Iaphet* the elder. Some will have *Hem*. But I leave that matter; supposing clearly that *Sem* being *Melchisedek* (for, that one man should be denoted by severall names, is no novelty in Scripture) was either the first born or had the right of it transferred into him by speciall blessing, and so was truly *as in Genesis 14. 18.* as *Paul* calls him, that is, the great high Priest of the greatest God. For the place of his Kingdom, *Salem*; is taken by *S. Hieron* (as he learned from some *Jews*) and from him by *S. Ambrose*, *Eusebius*, *Primasius*, and others that this *Salem* is that which seated on this side of *Jordan*, is some *LXXX* miles distant from the plains of *Hamor* where *Abraham* lived, and retains its name in the words of *John Baptist*, and they say that the reliques of *Melchisedek's* Palace were there to be then seen. But the more common opinion of Christians in *S. Hieron's* time, was as now also of greatest Divines, that *Salem* here and *Jerusalem* were the same: *Salemus Hieronimus*, saith he and others of that age that follow him; *arbitratur esse Jerusalem*, but himselfe was not of that mind, having as hee saith, learned the contrarie. But also, with those old Christians, *Josephus* and some later *Jews* expressly agree, and a good character of the truth of their opinion is in the holy Text. For, there the *King's Dale*, whence the King of *Salem* came out to meet *Abraham* in his return is remembered, as if it were close by where *Melchisedek* was. Now it is thought certainly that the place of *Abraham's* Pillar, that is, the *King's Dale* spoken of in *S. Samuel*, is no other then a Valley, which being hard by *Jerusalem*, is known to our age from *Abraham's* name, where yet, they say, he hath a monument; and such as passe by, use to cast stones at it in detestation of his disobedience. and also the very place where *Melchisedek* gave *Abraham* the Bread and Wine, is, they say, yet known on Mount *Calvary*. But hitherto briefly of these two adjuncts of *Abraham's* Tithing. neither suppose I but that many which think of it for argument either way, would desire some satisfaction in them.

Of the II. Chapter.

H Ethern could I never see any Christian that hath fully taught what was considerable in the generall payment of Tithes among the *Jews*. The Noble and most learned *Ios. Scaliger*, did not every way enough accurately teach it, although in a single Treatise he purposely undertook it. How sufficiently among vs, others do that doubtfully and ignorantly (without his help) while yet their end

is to write of Tithes, talks of a third Tithes here, and a fourth Tithes, and indeed they know not what Tithes, let him judge that shall hence know their error. This last spring Martin the Tale page of Drusius his Observations upon Isaiah, and some other parts of the old Testament, a new discourse, *De Decimis Mosais*, written by Sixtinus ab Amone Professor of Hebrew in Franeker, was promised; but I could never yet see any such thing joind with that of Drusius or otherwise published. What we have of them is as the great Doctors of the Jews have delivered in the *Talmud*; and their later Commentaries, which are testimonies beyond exception, for the practice of historical part. For that in 6. 6. of a *tractatus de Tithe*, out of Epiphanius; I never think indeed that it denotes only a paying of Tithes, nor a Tithing of what was already tithed. It is well known that the language of the Greek Fathers, especially of about his time, is frequently mixt with phrases of the *Septuagint*. Now they have *ἀποδοῦναι τὴν τιμὴν* & *ἀποδοῦναι* for nothing but to pay a Tithes, which agrees somewhat with the Hebrew fashion of expression, and as they, so Epiphanius without doubt understood it. However some of great Names are of another mind. But to what is there toucht for the forwardnesse of payment of first Fruits among them, I here add out of 1. Philo (who lived under the time of the second Temple, and spake of his own knowledge) that they were paid in such abundance, *ὅτι καὶ ἀποδοῦναι τὴν τιμὴν* *καὶ ἀποδοῦναι τὴν τιμὴν* *καὶ ἀποδοῦναι τὴν τιμὴν*, that is, that even from the abundance only of first Fruits, hence Offerings, or *Therumahs*, which were paid by the owner immediately to the Priests, there was not a Priest in the XXI V. courses of them (so the Priests or Posteritie of *Alexander & Ithamar* were divided by King David) but might be accounted a very rich or largely furnisht man. and he tells us further that the Jews were so ready in paying them, that *τὴν ἀρτίστην ὀφειλὴν*, *τὴν ἀρτίστην ὀφειλὴν*, *τὴν ἀρτίστην ὀφειλὴν*, *καὶ ἀποδοῦναι τὴν τιμὴν* *καὶ ἀποδοῦναι τὴν τιμὴν* *καὶ ἀποδοῦναι τὴν τιμὴν*, that is, They presented the Offerings demanding them, paid them before they were due by Law, and as if they had rather taken a benefite then given any, both fears of their own forwardreadinesse in every first Fruits season brought them in with such courtiesse and thanksgiving as is beyond all expression. All which is spoken only of first Fruits and *Therumahs*, not of Tithes, as it is falsly in the Law in translation; where *ἀποδοῦναι* alone is ignorantly understood for Tithes paid by the Laity to the Priests, the truth being that the Laity paid only first Fruits, not Tithes, immediately to the Priests, but only to the Levites, that is, those which were, as Philo saies, or *ἱερεῖς*, that is, in the second rank, and *καὶ ἀποδοῦναι τὴν τιμὴν*, or as Wardens, Maisters, Singers, and other such Ministers. And the Levites paid the Tithes of their Tithes to their Priests, who so through the Levites received Tithes

out of the possessions of the Laity, as also the holy Autor to the 2.
brum is interpreted where he saies, That these of the *saues* of Levi that
 had receivd the Priesthood, had a commendment to take Tithes of the people
 according to the Law. For the posteritie of *Aaron* that had the Priest-
 hood, receivd none from the people, but immediately and through the
 Levites. In the same holy Epistle their continuance of payment of
 Tithes (which as long as their Priesthood *de facto*, and the politique
 form of government, instituted by the Almighty, continued, was e-
 ven *ex conscientia* to be performed, as some reach) is also manifested
 after *Philo's* time. The *Levites* are told in it, that *here men that dis receive*
Tithes, but there be of whom it is witnessed that he liveth. That *here*, being
 plainly referd to the use of the Jews (to whom the Epistle was sent)
 vnder the second Temple. So *Primasius* an old *African* Father Inter-
 pretes it. *Hic inquit, sicut he, but est in presentis seculo, vel in Templo quod*
ad huc stabat, Morientes homines, filij videlicet Levi qui mortales ac mori-
bundi sunt, Decimas accipiunt. But about this time also it appears in
 Storie that Tithes were still paid by the Levites to the Priests, which
 supposes the peoples payment to the Levites. Remember that of *Fl. Jo-*
sephus where he tells, that when *Felix* was Lieutenant of *Judea*, such
 a tumult and sedition happend twixt the high Priests (*exxipis*) and
 the rest of the Priests, and the chiefest of the Laity, that the high
 Priests to satisfy their malice vpon the rest of the Priests, violently
 took away the Tithes that were kept in Granges and Barnes for their
 maintenance, and in so much wronged them that some of the poorest
 of them even died for want. This was about the beginning of *Nero*,
 and *Eusebius* and *Nicephorus* relating it from *Iosephus*, refer it to him.
 although *Ruffinus* in his translation of *Eusebius* rather place it vnder
Claudius, but vnder both, *Felix* was Lieutenant. By the way you may
 note that in *Nero's* time, divers of the Priests were grown much poo-
 rer then they had been lately before; if *Philo* be to be credited, who
 lived also but litle before *Nero's* Empire. It was very hard with some
 of them (it seemes) that the taking away their Tithes only should
 starve them: Those high Priests here spoken of, are such as were the
 chiefest of the XXIV. Orders. for so also were the Priests devided.
 There was never but one high Priest properly, and that according to
 the first institution, but others that had a supremacie among those or-
 ders, were also called so, as both heere, and in a holy Writ. and they
 were, to the high Priest, as the *ἐπίσκοποι* in the Eastern Patriarchats
 which are as Suffragans, to exercise the Patriarcha office in his ab-
 sence, or as the Bishop-Cardinals in Rome, and the first and chiefest
 of these high Priests in the plurall number, was as a designed succes-
 sor to him that properly bare that name, and was his Prime Vicar,
 chief Suffragan, or the second Priest, as *Zephaniah* was to *Seraiah*,
 and as *Ananias* to *Caiaphas*. For so the most learned understand that of
 them two, being high Priests together in the Gospell, but this by the
 way.

1 Vide *Is. Suarez*
de Legibus lib. 9.
cap. 19. § 16.

m *Archaeolog. lib.*
cap. 6.

n *Eccles. Hist. lib. 3*
cap. 20.
 o *Lib. 2. Eccles.*
cap. 26.

p 1. *Paralip. 24. 4. 5*

q Vide *D. Math.*
26. 37. & 39.
 r Vide *Is. Scalig.*
in Prolegom. ad
Chron. Euseb.

s 2. *Reg. 22. 18.*

way, yet who knows it not, may soon stumble at the Storie; and, if not admonish, trouble himself with in good a disquisition about it, as that Abbot Pasche, so long since fell into about what follows out of *Seine Maestrie* in the 7. §. where the strict payment of Tithes vied among the Scribes and Pharisees is spoken of. He brings too ignorant of the particulars of the Jewish State, doubted much how the Scribes and Pharisees should so pay their Tithes, *cum ipsi* (as his words are) *Sacerdotes erant & Levites quo magis accipiebant. Verum a populo quam de- rent.* But I wonder what made him so much as dream so. Indeed he answers himself also. But plainly the Scribes and Pharisees, as known by that name only, had no more reference to the Tribe of Levi than to any other of the Twelve. Children in the holy Text or the Jewish storie, know it.

That generall rule of their Lawiers in the same §. taken out of *Rabbi Ben-Maimon*, is first in their Talmud, where also the Gemara, that is, the following opinions of their Doctors, hath many speciall cases of this or that fruit or increase of the earth, but often lide to the purpose, one thing their *Misnah* or Text adds further to that rule, that is, whatsoever fruit or herb is fit to be eaten, both while it is yong or new, as also when it is a full growth, must pay Tithes as well when it is yong, as at full growth. but if while it be yong it be not fit to be eaten, *ככל שיהיה ראוי לאכילתו* that is, if it is not *fit to be eaten* untill it be come fit to be eaten. That in §. 8. of them that take the profits of Land among the Samaritans, or in *Aram*, that is, Syria, must be understood of a Jew dwelling among them, and tilling the Land there. For regularly if the fruits of Lands in Syria were taken by a Jew, residing still in his own Countrey, he was to pay Tithes of them.

Touching their Tithing after the second Temple destroyed, although for want of a Temple and a Priesthood at this day, they Tithed not legally, yet among their Aphorismes both divine and morall, they tell us, that as the *Masorah* is the defence of the Law, so *לעשר* *לעשר* might be said to be the defence of riches. Whereupon one notes, that at this day *qui religiosiores sunt inter Iudeos, loco Decimarum, elemosinas pendunt de omnibus Lucris, decem aureas de centum, centum de mille &c.* But however the deavout of them may give such almes, it is plain that their Legall Tithing hath now no place among them for want of a sufficient Priesthood and Temple or Tabernacle. yet without doubt, most of them have long since expected a third Temple, otherwise why were they so carefull since expected a third Temple, otherwise why were they so carefull to have their Laws and speciall cases of first Fruits and Tithing, so copiously delivered in fine whole *Massecheths* of their Talmud, or body of their Civil and Canon Law, which was, many years after the destruction of the second Temple, made for the direction of the dispersed of their Nation?

Now, one thinks, he that argues for Tithes from the Mosiacall

1. *Pasche, R. Asher, in*
Maaseh, lib. 10.
pag. 592.

2. *Seder Zedek*
Masseh, Maaseh
Perk. 1. §. 2.

3. *Talmud, d. 3.*
Seder, Mass. De-
mai Peru, 6. &
Masseh, Maaseh, §
Perk. 1. §. 5.
4. *Perk. 1. lib.*
cap. 1. & nota
adiecit.

5. *Vide in Gal-*
sin, de Aram
lib. 5. cap. 9.

Laws of Tithing had need more specially; then any I have yet seen hath neer done, examine which of the two kinds are due in the Evangelicall Priesthood. Why not the second as well as the first? and further consider also how the payment of Tithes from the Laity to the Priests of the Gospell, succeeds to the payment from the Levites to the Iouanes of Aaron. But these considerations can only be, where the knowledge of fact precedes, for without exact Distinction of their seuerall Tithes, any argument drawn from them, may soon be found a grosse fallacie, that may both deceive him which makes it and those whom he teaches. Let the ingenious Reader thinke of it.

But one thing more here by the way. So much either ignorance or neglect in the disquisition of what belongs to the Tribes of the Lev, hath possesst some great names, that, touching the proportion of the Tithes and the Revenues, they have rested fairly satisfied in this; that the Levites being one of the twalve Tribes, had the Tenth as a competent maintenance to themselves, being neer the Tenth, that is, being the twelfth part of the people; as if Arithmetically the People and the Revenues had been so divided. But others have long since easily shewd the slightnesse and falshood also of this fancie. And clearly, had such a neer proportion of persons and the name of Tenth held, yet examine all that was paid to the Priests and Levites in first Fruits and the seuerall prebend Tithes only, and it will be neer a fifth, and we here omit also the Cities and Suburbs assigned to them, and their other many profits out of Sacrifices, ransoms of First-born, and the like. But for that proportion of number twize the Tithes, wee have sufficient testimonie in holy ^{Scripture} writ, that it was farre otherwise. The able men for armes of the eleven Tribes were numbered to 603550, and these all of XX years old at least. the Males of the Levites from a month old were seuerally found to be but 2273, for so are the particulars of the Families of Gerson, Kaath, and Merari. Here then the Levites reckond, with advantage of all their Male children of about a month old, make not $\frac{1}{40}$ of the rest of the Tribes. had the rest been accounted also with all their Males of like age, it is probable enough that the Male Levites would not have equalled a fiftieth or sixtieth part. as in the one sex of them, the conjecture may also be in the other, and afterwards likewise. in Danish numbering, we see the Levites of 30. year old were lesse then $\frac{1}{4}$ part of the rest of Israel and Iude, that were able to bear Armes. Where then is any thing towards proportion twize the number of the Priests and Levites, and the denomination of the Tithes? Neither is it to any purpose or consequent to look after any such thing. I rest in this, that it pleased the Almighty to so enrich the Tribe, which was reserved only for the holy Service in the Temple. Why he did so, or with what proportion, let them, for me, examine, who dare put their prophane fancies to play with his holy Text, and so most impudently and wickedly offer to square the one by the other.

Numer. cap.

1. & 3.

Vide 1. Sam. 24.

9. 1. Paralip. 23.

1. & 27.

Excellently
well said
and that no less

though the author be a Lawyer

e Cato de re Rusti-
ca cap. 132.

f Trebatium ornd
Arnobium cener.
fms Gentes lib. 7.

g Ad. Arnold. 3.
commate 30.

h Halicarnass.
Pomp. App. 107.
a.

i Apud Marti-
num. Sacerdot.
lib. 3. cap. 12.

k De Officiis
Marti.

of Bacchus, their Calpar or the first and best of their Wine, as it was when they first began to draw it, sacred to Iupiter Dapali, their Praemessum or Praemetium before Harvest, their Florifessum after Harvest, both bestowed in honor of Ceres, and the like were to her and to Iupiter, Juno, and Bacchus; that we may omit their Robigalia, Solitaurilia, and the rest of such kind. But all these plainly were at the libertie of the Owners. and so was it expressly denoted in the rituall words of sacrificing of their new Wines as * *Macte*, or *Mactum Iupiter hoc vino inferis esto*, as if they had said, Be honored Iupiter with this Wine, which is as much as I can spare thee. for so much is in substance denoted by *inferis*, that is, *Vino quod inferitur*. and therefore was that word * added because all the rest might be free from Religion after this were so severally sacrificed. For vntill the Sacrifice, all the Wine remaind so sacred that it might not lawfully be medled with for common vse. But the owner might by such arbitrarie giuing his *Inferium*, discharge it of being any more sacred. and thereupon saies Arnobius, iesting at their Ceremonies; *Mactum hoc vino inferis esto quid est aliud quam dicere, tantum esto mactum quantum volo; tantum amplificatus quantum iubeo; tantum honoris assumpto quantum te habere decerno, & verborum circumscriptione defuso.* O Deorum sublimitas prepotens &c. qua per vinum formidinem verbi ab immodicis vini cupiditatibus arceatur! Among all these feasts not any mention is of a Tenth or any certain part. But the Tenth came sometimes only at the will of him that had good fortune or post rem bene gestam, as Sernius his words are. So Hercules who had been a Piper all his youth, and doubting the successe of that Trade, set thence to be a Marchant, and then *re bene gesta Decimam Herculi dedit*. That consecrating vse to Hercules was most ritually made with solemnitie at that Ara Martia, neer the Forum Saurium or the Ox-marker, vpon which, some say, but fabulously enough (as the rest of these particulars are deliuered) that Hercules himself in st spent the Tenth of what he took from Cacus, in a iolly Feast, with Eumachia and the rest that honored him for it. and vpon that Altar, saies Halicarnassus, *Πεναρτίος τε Χρησίου τε θύοντες οὐχὶ καὶ αὐτὸν ἐν ἑσπέρῃ, that is, Tibes* are there frequently offered by vow. But the payment of that vow was commonly in feasts made in honor of him; and those feasts were, it seems, in ancient time, vntill the Vow was performed, celebrated within euery ten daies by such as were so religious to him. and in that dimision of time, for the more conuenience of entertainment, his Tithe was merrily spent; and the guests alwaies sent home crown'd with Baies in honor of him. So I vnderstand that of Varro when he tells vs, *Maiores soliti Decimam Herculi dare, nec decem dies intermittere quin polluerent ac populum deusculari cum curata laurea dimittant cubitum.* and of this kind of Feasts were those Dinners of Orestes, spoken of in Cicero: *Orestis nuper prandia in senectute Decumia nomine magno honori fuerunt.* It seems their vow both of Gain and of Spoiles of Watre, was made to him

him chiefly as he was their God of Warre or of Defence. For it is cleer not only in the old Roman Divinitie or Mythologie, that *Hercules* specially was accounted *Mars* (as is plain by their Monuments, which shew that the Institution of *Sansa Salaria* were indifferent to *Hercules* or *Mars*, and made to one Deitie vnder those two names) but also by the old Astronomie wherein the Planet *Mars* was likewise called *Hercules*, and that not only by the *Chaldeans* (as *Macrobius* too rashly affirms) but also by the *Egyptians*, from whom the knowledge of the Heavens came into *Europe*. For howsoever it be noted out of an old Glossarie at the end of that most learned work of the noble *Scaliger* vpon *Manilius*, that *Mars* was called among the *Egyptians* *Nuptus* vpon *Manilius*, that *Mars* was called among the *Egyptians* *Nuptus* suppose the Northern *Egyptians* about *Alexandria*, where they spoke Greek before the Roman Empire and afterward) and although some other old testimonie, say they, stiled him *Apus* (not *Apus*) yet *Achilles Statius* that was an *Egyptian* saies expressly, that *Pyra* is the Greek name of *Mars*, and that in *Aegypt* he was calld the Starre of *Hercules*. So the Autor of that *ἡρωικὸν ποίημα*, attributed to *Aristotle*, *Πυρᾷ δὲ Ἡρακλῆος τὰ εἰς Ἀπὸς προσηγορεύοντες*, that is, *Pyra* being calld both *Hercules* and *Mars*; which *Apollonius*, because *Hercules* was not so common a name for it, thus turns, *Quem multi Herculi, plures Martia stellam vocant*. and his common titles in old Inscriptions iustifie the same. *Inuiso, Victori, Defensori, Pallenti*, and such more are frequently his additions, being proper to *Mars*. and vnder some such Title was he worshipt almost in euery Citty of *Italie*. and I would *Varro* had rather here sought the cause of his title of *Victor* then in that ridiculous reason which he brings, *Quod omne genus animalium decem vicerit*. had he said that therefore also the Title was given him because of *Decies*, he had spoken as probably and as wisely. Indeed it is a wonder to see a man of that abstruse learning and great abilities, that *Toga torum* *Dolissimus*, to be so childish as he often is, in unhappily troubling himselfe about derivations. But of *Hercules*, enough. Beside that of the maritime *Pelagi*, in §. 1. the other of them that seated themselves further into the Land in *Umbria*, being oppressed with a sterile year, vowd the Tenth, *ἄνδρες ἅ τινι προσηγορίῃ ἀνδρῶν* that is, *The Tithe of all that should encrease to them*, to *Jupiter*, *Apollo*, and the *Cabiri*. and this they paid also. but they were admonisht by *Apollus* Oracle, that their vow was not performd vntill they had sacrificed also the Tithe of their children. which was done also. But now see (when you truly know the ancient Tithing among the Gentiles) how well they conclude here that draw arguments from the generall Law of Nature or Nations, as if by that Law any such vic of payment of Tithes had been established among them, as was continuall or compulsiue.

1 Tbls. H₂O. 66.3
cap. 8.

in *Dei* *Valen*,
Antioch *lib. 4.*
Antioch *Ms. Sed*
verba eius repo-
nuntur in Synagoga
1. De Dei Syn
cap. 4.
n. In Anti Pha-
nomia.

o Halicarnass.
Papa. α' γ' χαριστ.
α.
P. apud Severianum
ad A. Enkid 2.
c. 30.

q Myrsini Lalliu
apud Halicarnass.
Ρομ. α. 5 χαλκ.
α. citatur Histo-
riae veteris apud
Eusebium in
λογ. τριακον-
ταετηρικῇ.

OF

Of the IV. Chapter.

1 Ad Roman
cap. 7.3.

That which succeeds is only of Christian Practice, Law, and Opinion. Which, any man that sees but the course of our division, may easily know; though he were as perverse as he was that to confute me in assertion here of no proof of payment of Tithes till towards the end of the first CCCC. years, confidently brought that Text of the holy Autor to the Hebrews, & Here men that die receive Tithes and was readie to sing *decidit in cassis* &c. as if that had proued a payment in the Apostles time. indeed it proues a payment among the Hebrews of Jews then, and also is seconded by other autoritie before touched. but any reference there had to a Christian practice of Tithing, I suppose no man will affirm that is of a sound brain, and vses holy Writ with due reuerence. But my application of some passages in S. Cyprian in §. 1. here are found fault withall; in that I vnderstand not his mention of the word *Decima* to be a note of payment of Tithes in his age. Indeed I did not think that any man which vnderstood Cyprian, with the vse of his time in making vp the Ecclesiastique Treasure, would haue cherin taxed me. Neither haue I giuen his words alone & then my own Glossé (as many haue done too often, and that in things of the nature of this subject, and so haue deceiued their credulous Readers) but I haue carefully and shortly exprest also the occasion of his passages; and so, that an vnderstanding Reader may collect as much out of them as he might do if he had the whole context of Cyprian by him. If I haue erred in the interpretation, it is but my single error and theirs that dare giue autoritie here to my iudgement. whoeuer can think otherwise by Cyprian's words, if he saw him, may equally do so by my relation. however then, I impose not on any Reader. But for that second place of his out of his *De Unitate Ecclesie*, obserue his words more fully. Thus they are, *Domus tunc & fundus venundabantur*, the houses sibi in culo reponentes, distribuenda in vsu indigentium pretis apostola offerbant. At nunc patrimonio nec Decimas damus; & cum vendere iubeat Dominus emimus potius & augemus. So satre is this from denoting any payment of Tenth of annuall increase (which in the Tithes we enquire after) that indeed no such Tenth seems here to be vnderstood in the mention of *Decima*. he speaks of them which sold their whole estates in the Apostles times. but now, saith he, we give not the Tenth of our patrimonies. that is, we give not the Tenth part of what deuout Christians then did, but in stead of selling for deuotion, we buy and increase our estates. What other Tenth is here spoken of then the tenth part of euery mans patrimonie or estate? and what hath that to do with the tenth of Annuall encrease only? and, for any vse of payment in this time: I was not so bold to make the negative, that no Tithes were paid, but that it could not be proued that any were. He

c Lib. 2, Can. 34.

d 1 Sam. xix. 8.

e Lib. 2, Can. 36.

collection of these Constitutions, and surely had used them if they had then at all been, and deserved credit. and who would have made a counterfeite about the holding of Easter, that had in those elder times found it so established as it is in those Constitutions. But it is not difficult to conjecture out of what kind of shop they came, if you but note the supremacy of all power so arrogated in them to the Clergie, the Authors of them command that Priests be honored as Kings and have tribute paid them as Kings, and are so bold as to apply that in *1 Samuel*, touching what a King would do in taking from his Subjects, to the power of Bishops, as if they should do so. and they affirm it, as much more reasonable, than Bishops should do so, and ordain also with *Demosthenes*, that is, *we constitute*, the like wholly *epi Enkratou*, that is, *touching bishops*, as there, they say, is ordained *epi Basileus*, that is, *touching Kings*, which well agrees also with their reckoning up of the ten Commandments, and making the Tenth to be *ἐν τῷ ὄνομα τοῦ κυρίου ἡμῶν ἵνα μὴ φονεύῃς*, that is, *Thou shalt not appear empy before the Priest*. He that made these words to fill the place of one of the ten Commandments, seems not to talk like one of the Apostles. A thousand things more might be found to disprove the authority that some attribute to these Canons, and the answer to *Turrian* reasons for maintenance of them, are obvious enough. For my part, I think confidently that most of them, if not all, are hardly 100 years old; and therefore no sufficient cause is, why they should have place of credit in any part of our Division, as they bear the name of Canons or Constitutions. For if they were in truth made so long after those whose names give them all their authority, they are all one, for Constitutions to be relied on, as if they had been but of yesterday. I only touch part of them in this first CCCC. years, as they were in the *Latin*; the *Greek* being neither then by me nor much materially, although some passages in other translations and to this purpose, if not examined by the *Greek*, may soon deceive a Reader of too ready a faith. For one of those other Canons attributed also to the Apostles as Authors, and to this *Clement* as Collector, is translated, *Ἐν ὁνόματι τοῦ κυρίου ἡμῶν ἵνα μὴ φονεύῃς*, *Dei nomine fratres inquit omnes utinam Episcopi et Presbyteri, & non super Altari*, the *Greek* that is turned and set by the *Latin* in the same Volume, having not a syllable of *Thies*, but speaks only thus. *Ἡ ὅλη ἡ ἀποκαθήνηστος ἐστὶν ἡ ἐκκλησία ὡς ἡμεῖς τῷ κυρίῳ ἡμῶν*, *ἡ ὅλη ἡ ἀποκαθήνηστος ἐστὶν ἡ ἐκκλησία ὡς ἡμεῖς τῷ κυρίῳ ἡμῶν*, that is, *Let all after fruits (being first fruits) be sent home to the Bishop and to the Priests, but not brought to the Altar*, the meaning being that only first fruits of new grapes before Vintage-time, or of young herbs fit to be eaten, or such like (comprehended vnder the words *ἡ ὅλη ἡ ἀποκαθήνηστος* in the next Canon before) should be brought to the Church and so are the explications of *Zonaras* and *Theodore Balsamon*, two great Canonists of the Eastern Church.

1 *Constit. Imperial.*
tom. 1. pag. 15.

in *Annal. Boi. rom.*
lib. 3. pag. 179. edit.
Bas. a. d. 1613.
in *Centur. 3. cap. 7.*
c. 9.
o Tom. 3. pag. 117.

p. *Fellus Pauli in*
Pecunia c. 16.
Scalig.

q. *Gallus tom. 3.*
pag. 64.

r. *Idem tom. 100.*
pag. 118.

* *Post. c. 50. c. 16.*
q. 1. edit. Gregor.

z. *Vide Gallus*
tom. 3. pag. 44.

made in the Synod or Diet at Ratisbon, held vnder Carolus in DCC. XLII, as it is in *Meibomius Goldastus*, in his first Volume he gives it thus, *Decimas, bona Ecclesiastica occupata a prophanis restitimus*, as indeed both *Meibomius* and the *Centurius* haue it also literally before him; both out of corrupted Copies. But after ward the diligent *Goldastus*, finding a better Copie, entirely again publishes the Laws of that Synod nearer the originall; and this one o thus: *Fraudatas pecunias Ecclesiarum Ecclesijs restitimus*. Some other Copies hauing *fundatas*, but none, of any autoritie, *Decimas. pecunias* being only their wealth or estate in Lands; as in more ancient time *pecunia* denoted chiefly estate in cattell, and then money, as now it doth. I know also it had a signification that included offerings & of fruits and corn, and so might be drawn to denote Tithes offered, but that signification was of rare vse, and only among the Gentiles. Neither (as I thinke with some confidence) can any man shew me such vse of the word in any Christian Autor of the ancients. And the very decree of *Thierry King of France*, and that *Charles Martell the Maire du Maison*, of the yeere 1 DCC. XXX. touching the taking from the Clergie their possessions, *¶ subueniatur necessitatibus publicis & salutis militum pro Dei Ecclesijs, & bono statu Reipub. & vniuersusq; pro via pace pugnantium*, as the words of it are, and that of *Carolus* in DCC. XLIII. speake not a word of Tithes, but only of *terra & casata* (which were the *Ecclesiastica pecunia*) and the small Rents to be referred to the Church vpon leases made of them, which is, it seems, vnderstood in the more common giuing of them into Lay hands so much spoken of by *Flodoard*. that is, Lay men had the benefit of them by hauing Leases of them at small Rents without Fines. Neither is any other thing spoken of in the Capitularie exhibited by the Bishops of the Prouinces of *Rheims* and *Rheims*, to the Emperor *Lothar* the second. When I see any testimonie neer *Martells* time that so may iustifie the receiued tale of his prophaning of Tithes as I may change my mind. But seeing so much of his sacrileges left in the storie of neer his age, and that not a syllable touching such Tithes as we here enquire after, nor any thing els that hath reference to the common paiement of them, is found in the Laws made vnder him, I still remain confident in what I haue ad-mouished; and I thinke so will every man els that hath an impartiall eis of iudgment. But, for that which I haue here noted touching *Casata*; perhaps *Casata* should rather haue been interpreted a *Messuage*, or dwelling house. For it appears in that Capitularie exhibited to the Emperor *Lothar*, and in some other testimonie of that time, that the reseruatiens *ad restitutionem terrarum* (which may be satisfaction giuen by the Lessees of the Clergie, in Rents of land) were *Rent & Decime* (where *Decime* haue not to do with paiement of Tithes out of meer lay Fees, but only were receiued by reseruatiens) and out of euery *Casata* xij^s. So it may be that *Casata* is no quantitie of Land there,

as I have collected, but a house only. if it be, you see whence I was deceived: pardon me: perhaps it was an error. I willingly acknowledge so much upon this Review. I acknowledge it, if that Capitulation of the Bishops and the other testimonies be therein authentic. I somewhat doubt them; because the most known and certain Laws of *Martell's* time speak only of *xij^l*. to be served out of every *Casate*, and the *Nona* and *Decime* grow not elsewhere into use till after the beginning of the *French* Empire: and if nothing but *Casate* were spoken of, there were reason enough why they should be taken for Land. But the *Nona* and *Decime* in those authorities are referred to Land, and the *xij^l* only to *Casate*.

That in the 4. 5. of the Title of time in Lent out of *S. Gregorius*, is not easily perhaps apprehended by every Reader without a little more explication. The *Sundays* as they were exempt out of the number of daies, so were they from the fasting of Lent, thence comes his conceit of the Title of Time in XXXVI. daies, which is $\frac{1}{4}$ of CCC.LXV. so Fractions be omitted. and to make up for that which is express in *Quadragesima*, the known name for Lent; the four daies preceding *Quadragesima* Sunday, are to be added. this was the intent of that fancy. But how slight and nothing to the purpose, that observation of the Tenth of Time is (however the *Canons*, as I own to their Text, make of it) is easily seen; not only in the absurd libertie of calculation of it, but also by the customs and Laws of both Churches the West and East in their various limits of this time of fasting. *Pope Telesphorus* they say, made it VII. Weeks. and other diversities hath it had in the Western Church, and the Eastern church exempted both *Saterdaies* and *Sundays* from fasting through all Lent, except only the *Saterday* that next preceded *Easter Sunday*. as also they fasted not on the day of the *Annunciation*. Where regard had they then, think you, to the Title of Time?

Of the VI. Chapter.

The practice of payment in the third CCC. years, was Parochially observed in some places, but especially by Clergie men, to Clergie men, who (with such as were reputed among them) subjected themselves more to their *Canons* than the Laity could be brought to do. But it seems somewhat plain by the many examples of Arbitrary Consecrations to Monasteries and other Churches, related in §. 1. (where to joins also the English practice in the XII. Chapter, and the Charter of *Henric* the eighth, Duke of *Bavaria*, of the Tithes of *Kamshofen*, given to the Church of *S. Peter's*) that the payment of them Parochially performed by Lay men, was yet frequently omitted or continued to their own will. Whence otherwise could the Founders and Benefactors of Monasteries have made

ad hanc rem §. 1. 2. & 3. habemus
Videtur Hinc magis
in opere Caput
§. 5. ad Land Ep
scop. cap. 1. & 2.
bapum apud Co
turiatorem cap. 9.
cap. 7. de iure in
rando quod exi
gebatur nonnun
quam de decimis
rite solutis.
a Apud Aurum
Annual. Bavarum
lib. 6. pag. 179.
edit. Bas. 1635.

2. *Augustinus* in
vita sua. & vide
Baronius sub ann.
1544. & *Polydorus* de
Inventis lib. 6.
cap. 3.
3. *Isidorus* in Tract.
Cap. 55. & vide etiam
Constit. ad
postulatum dist.
lib. 5. Cap. 13. 15.
4. 18. & *Confulo*
Enghelensis Hist.
lib. 5. cap. 16. &
Socratus Hist. Ec
cles. lib. 5. cap. 21.

Præter ea quæ
ad hanc rem §. 1.
2. & 3. habemus
Videtur Hinc magis
in opere Caput
§. 5. ad Land Ep
scop. cap. 1. & 2.
bapum apud Co
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lib. 6. pag. 179.
edit. Bas. 1635.

Tithes

creation. And doubtlesse also, after such time as the Clergie saw that the Canons, made for Parochiall right of Tithes, had gotten force, and that the former creations or grants of Tithes by Lay men (which were indeed practised against many Canons both Papall and Synodall) were, by that name of Lay-mens grants, creations or consecrations, declared utterly void by the Pope and his Canon Law, although confirmed by whomsoever; such of them as had originally no other true titles to Tithes so commonly consecrated by Lay men, subtilly enough in the next four hundred years, left off the pretence of their Lay grantors bountie (especially if the Grantor had been a common person) and betook themselves only to prescription of XL. years, and to what other times might be allowed to settle a right to them upon a possession of Tithes; and, by what way, remaind safely what otherwise, if they had held themselves to the deeds of their Lay grantors and to Confirmations, had been in danger enough of being recovered from them by Parish Rectors. So that, when the prescription was good in regard of time and possession; although the originall Title it selfe were naught; yet because any other iust Title might be pretended to ground the prescription on (which also was a note of necessity to be proved incorporeall things) it was not difficult to have a false countesse to maintaine their possessions and right of such consecrated Tithes, as had been possesst so fortie years before they were questioned by Parsons which claimed them *iure communi*. For against them, such a prescription by any other Church, Abbey, or Bishopricke or such like is a good Title. Remember also their erecting of Parochiall Chappells within the larger Territories, out of which they had portions, plainly, the erecting of such Chappells for Parish Churches (the Cure being there served by some Monke or Vicar, instituted upon the presentation of them which had the granted portions) made those portions at length also in many places be reputed for Parochiall Tithes, due in regard of those Parochiall Chappells. But what course soever they took; it seems certain, that the Titles derivd from Lay consecrations were after this third CCCC. years carefully concealed by the Possessors in such publike records of their revenues, as were of more common and open vse in their legall proceedings or the Canon Law, however they remained still in their ancients and more secret Chartularies, and with vs I have very rarely, scarce at all, seen an Instrument of them in their Liger books or otherwise, written in a hand that is later then King Edw. time. the most are before him. But I have seen Catalogues of the time of Henry the third and Edward the first, of many large portions of Tithes, that doubtlesse came first from arbitrarie Consecrations, and that through most of the Dioceses of England, wherein not the least mention is of any Grantor, only possession is remembered, and that, by prescription was to be insisted. Some Titles also I have seen made to Tithes in Libells of the time

f. *Exm. de de pra-*
script. a. 6. & 2.

g. *Vide Tenuit.*
4. ad tit. de pra-
script. c. si diligenter
& ad tit. de Decim.
q. dudum &c.

time of Henry the third, especially in the *Liege* books of *Reading*, *Oxford*, and *Peterborough*, but in none of them ever any derived from Consecrations. Neither indeed, in that ancientest Formularie of the Canon Law (I mean *David*, that lived about CCC. L. years since) is any other Libell for Tithes, then such as make the Title Canonically. None that touches Lay consecrations; which diuers years before his time became as much concealed in legall proceedings of the Canon Law, as they had been in the more ancient times desired and hunted after by such as were enricht by them. This of arbitrarie Consecrations, I presume, is like strange Doctrine to most men, it may well be, for the truth of it, I think, was neuer before so much as pointed at by any that had written of any part of our subject. But I doubt not but every understanding Reader will think these things here now shortly noted on them to deserve his consideration, which I desire him also to referre to the XI. Chapter, and also let him apply to them the Admonitions toucht presently in Appropriations.

For Appropriations which are in the 3. 5. they consisted (as you see there & in the XII. Chapter) for the purpose, either in conueying *Parish Churches appropriated with Tithes* settled in them sometimes by a continuance of payment, sometimes by Consecrations, or by both; or of Churches that were then appropriated when (according to the use of the time) none or few Tithes were paid to them, yet afterward in the hands of the Monks or such like, when the Canons for payment of Tithes came into force, got Parochiall payment to be made to them; or thirdly in passing of Tithes formerly created and in esse. So that as by Consecrations, Tithes newly created, were settled in Monasteries and the like, so, by Appropriations, Churches with Tithes in esse, or with the pretended right to them, and Tithes alone (but formerly in esse) were conueid to them. The whole Appropriation of Tithes with Churches or Churches alone (we shew) in that ancient time was made by the Patron. The Churches with Tithes (by the name of *Ecclesiarum Decimis*, when Tithes were paid to it) was in point of interest giuen by him. And many more Churches haue been so appropriated, then by the later and more known course. Neither, I think, haue many new Appropriations been since made. not many in regard of the number of the other. But deserves not this then another kind of consideration then is commonly dreamt on, among them which make Tithes due by the Diuine Morall Law to the Euangelicall Priesthood: if they be so; what had the Patron as Patron (were he either Temporall or Spirituall) to doe with them in conueying them to Monks, Friars, Nunnies, poor people in Hospitals? none of these, by that name, are of the Priesthood, and that way, they were so equally due to the ministering Priesthood before the Patrons title to the Church, that what ever he could do after he were Patron (although also his act were confirmed by whom you will) could not at all, it seems, touch them, or con-

may them from him that should afterward exercise the spiritual jurisdiction of the Church. Consider Tithes so due; and how could any Monasterie derive to it selfe any Title to that selfe same Tithes that was so due to the Priesthood? And if it had not the selfe same Title, but by prescription or other civill Title, having the glebe of a Church had also a profit by the name of Tithes as annex to the Church, notwithstanding then other Lay endowments (for no man can doubt but that any kind of persons may injoy a profit under the name of Tithes or Tenth, as well as a Rent of the Ninth part or of the Eleventh) who then is it that now detains the Tithes due by the Divine Morall Law, in cases of Appropriations? doth the Monasterie, or those which have such appropriated Tithes by conveyance from it? or rather doth not the Parishioner, that is bound to whatsoever is by that Law due, although he pay never so many other Tenths due only by some civill Title? or by that Opinion, is not he that receives the appropriated Tithes bound to pay a Tenth of it to the Minister, and the Parishioner a Tenth of his Nine parts. I affirme nothing here, it is no place for me to do it. But let these things be first considerable to every one that talks of Appropriations, and concludes Tithes due *iure divino morali*. And, for Lay mens right to the appropriated Tithes (that is, such as did either vest in the Monasteries by Appropriations, or at least have been enioied by reason of them) let him examine it rather thus: may that which either Grant or Prescription, or other civill Title once seised and so even consecrated to God and holy uses, although should, be afterward prophaned to Lay hands? But it is a grosse error to make it cleer as many do, that if Tithes be not due to the Priesthood *iure divino morali*, then Appropriated Tithes may be still possessed with good conscience by Lay men; and that if otherwise, then they may not. For though they be not due so; yet is the consecration of them in the Appropriation, nothing? for if they be not due so, then it will be cleer, I think, to all, that they might passe in the Appropriation, as other things, subject to the Titles of humane and positive Law. The many execrations annex to the deeds of conveyance of them, and poured forth against such as should divert them to prophane uses, should be also thought on. and let them remember also, who saies, that *it is a Destruction for a man to despoile what is consecrated*.

To what we have here of Episcopall right pretended to Tithes especially in Germany, & of Tithes appropriated by Bishops, you may add the examples of Thibaut Bishop of Werden in Saxony, that about M. CXL. *Contulit Ecclesie sue videram Decimar, & contulit fratribus Decimar in esse*. As also his successor Herman, *Contulit Ecclesie sue medium Decimar de Hasehwerder, & integram in Rakefede, & Tunderling*, and Luder Bishop there about M. CC. XXX. *Contulit Ecclesie Decimar in Emelendorp cum advocacia, and ordinavit Scolarihus Decimar in Menderp*. It seems this their giving of Tithes to their Church was an assignment

In his Table
talk by
Spinks:
Thickly
b. Plunk, 20. 12.
of these said
curses.

1. Knew, Memo-
pol 14. 6. cap. 29.
& 129. 29. & 14.
7. 29. 48.

k. Helmslduprath.
lib. Helmslduprath.
cap. 92.

assignment of them to the increase of their Prebends, or such like. for it cannot, I think, be understood of Tithes given to the Bishopricke by themselves, who as Bishops possesse or pretended right to Tithes generally in their Diocesse. But also, with that noted here touching Gerold Bishop of Oldenburg (or Lubeck) his vrging them of the Desert of Weyg to pay; obserue the words of his perwasive Letter sent to them to get their Tithes. *Dno, saluti ho, h. gratias ago, quod multarum in vobis parent vilitatem inspicis, quod videlicet hospitum et alijs misericordia operibus propter Deum insistis, quod in verbo Dei promptissimum est in construendis Ecclesijs sollicitus es, in legitimis quoque, ut Deo placitum est, castam doctrinam vitam, quae omnia tametsi obseruata non praeferamus, si cetera mandata negligitis, quia sicut scriptum est, qui se vno offendit omnium reus est. Dei enim praeceptum est, Decimas ex omnibus dabis mihi, ut bene sit tibi & longo viuas tempore, cui obediunt Patriarchae, Abraham scilicet Isaac & Iacob, & omnes qui secundum fidem facti sunt filij Abraham, per quod laudem vitam & praemia aeterna consequuti sunt. Apostoli quoque & apostolici viri hoc ipsum ex verbo Dei mandauerunt, & sub anathematis vinculo posteris seruandum tradiderunt. Cum ergo Dei omnipotentia proculdubio hoc constet esse praeceptum, & sanctorum Patrum sit auctoritate firmatum, nobis incumbit negotij ut quod vestra saluti deest, vestra in vobis opere per Dei gratiam suppleatur. Monemus ergo & obsecramus omnes vos in Domino, ut mihi, cui paternae reus cura commissa est, animo volenti, quasi filij obedientia, acquiescat, & Decimas prout Deum iussit & Apostolica benigne firmavit auctoritas, ad ampliandum Dei cultum & ad gerendum pauperum curam Ecclesia detis, ne si Deo qua ipsi debentur obnoxeritis & substantiam simul & animarum interitum mittatis aeternum. Valeat.* It seems he was in some confidence, that because he was a Bishop, he might make them beleue any thing of the Patriarchs and the Apostles: and you may see he loued the profit of the Tithes so well, that he would not stand vpon any vnlikely venturing his credit in Diuinitie, or vpon offering a plain falsehood, in writing for them. For though they were due generally as he would haue them, yet how would he haue proued that all the Patriarchs and all that were by faith as the sonnes of Abraham, paid them? or that thereby they all had gained *praemia aeterna*? and whence could he haue iustified it, that the Apostles ordained that they should be paid? It may be therein he meant the Contribution of the Apostles, of which enough before. if he did, how could he haue strengthened their auctoritie? But they to whom he sent remained still as farre from obedience as the historicall part of his Letter was from truth. And the truth was, he could by no means get any Tithes of them. But for that (in this) of Episcopall right, or the right of the Evangelicall Priesthood, so much pretended against Tithes enioled by Monks, that were indeed Lay men, howeuer reputed as a kind of part of the Clergie, it seems that in those daies the Bishops and Priests often stood so much on it; and so much and so often laboured

against

against Consecrated & Appropriated Tithes, possessed by the Monks (for they knew it was to no purpose to urge the Lay owners, who after they had given Tithes by consecration would give no score to any of them) that the most common place which in their Synods and Sermons they dealt on, was the right of Tithes, as due to the Priesthood, and in so much also and so vainly was that common place used, that there talking of it was become a Proverb to denote their frequent going from the matter, as if most usually they fell into that, when they should have talked of something else. This is justified by a passage of the Monk *Aimarius* in the life of *Abbe* Abbot of *Florianus*, where he speaks of a Synod held under *Robert* King of *France*, about the year M. (when *Aimarius* lived) in the Abbey of *S. Denis*. Very many Bishops, saith he, were present at it; *Qui cum de fidei puritate & de corrigenda tam suis quam subditorum pravis moribus sermonibus debuissest, iuxta vulgare proverbium, Cunctum suum sermonem ad Decimas verterent Ecclesiarum, quas Laici ac Deservitibus Monachis assente moliti, resistenti tamen in hac re hoc V. Dei Cultus Abbat, promissum in se vulgi concitante mentem.* and such danger did the Bishops, in urging it, draw on themselves, that they were driven all to dissolve the Synod by running away. you see here *Sermonem ad Decimas vertere*, was as a proverb to go from the matter, and for those words, *Laici ac Deservitibus Monachis*; I think, they are not to be interpreted *Lay men*, and *Monks*, but *Monks that were lay*, and spent their time in the service of God. For there is no doubt but the Bishops and Priests objected the name of *Laici* to the Monks here; and so was it fit, in the relation, so name them. and it was no wonder that the common people (whose bountie, in bestowing of Tithes on Monks, should thus have run to nothing) so fiercely opposed them. If you understand *Laici* by it selfe here, then it may denote the arbitrarie detaining or disposing of Tithes by meer Lay men, which, I must confesse, *Abbe* and his Monks and all other Monks whatsoever had some reason to withstand, for they gained much by it. But, I doubt, it cannot have reference to Lay Infeodations. For as yet I could never see the least testimonie of an Infeodation of Tithes until many years after *Abbe's* time, it might perhaps denote them also, but I dare not clearly affirm or deny here.

The 4. §. is of ancient Infeodation of Tithes. What is in old testimonie of them, is there delivered, but for time; we neither fetch them from *Charles Martell*, nor from the holy Warre of between M. XCV. and M. C. as others do. plainly both those Opinions are false. And it is as certain that they are false, as it is difficult to find the true beginning of Infeodations. Neither, I think, did any man ever referre them to *Charles Martell*, before *Martinus Polonus* Archbishop of *Casara* and Penitentiarie to the Pope, who wrote about M. CC. LXXX. *Earle* for (saith he of him) *galus*, *Denique militibus concessit*, and this being through many hands received, hath to this hour

I Vna Almon
Florian, cap. 4.

But we see clearly both the original of those consecrations to have been from Lay men; and also that no Tithes were or is paid either out of them or out of the rest of the profits of the Nine parts. How then can the other argument touching Infeodations better conclude here? beside it insists upon Canons, and would conclude practice from Law, which course of proofs, vld by most men that write of these things, is grosse and ridiculous. For who ever but indifferently observes the storie of the elder time together with the Law, shall soon find that in the Canon Law especially, an argument from *divine fieri* to *factum esse*, is scarce so sound as that so hush at among children, *in posse ad esse*. The truth seemes to be, that both in Consecrations, and Infeodations; and Appropriations of Tithes, there was not any other thing thought on then the name of Tithes, and the right of Tithes generally due to the Church; as if every thing being the Tenth, and by that name as it were specified, were presently the Clergies. So that whatsoever was by that name given away to mee Lay men or to Monasteries by new creation in either Consecrations or Infeodations, was, it seemes, taken alwaies to be the selfe same individuall Tithes which was supposed due to the Clergie, which also doubtlesse was a cause why many Infeodations having originall only from Lay men, were falsely supposed to have first come from the Church, for how easie was it that that which out of its own name only of *Divina* was presently taken as to be due to the Church, should be ruled an Ecclesiastique right; and then in the passages of them which would have had it so, be reckoned among such things as the Church had a title to by a former possession? and clerely many of the Laity also could not but be very inclinable to that opinion, for so long as that held it is likely they resolu'd they needed not to pay any more to the Church, for when the Church would not keepe the feudall Tithes when it had them (they thought it once had them al) they conceived doubtlesse there was no reason why they should pay it any more or other Tithes. Thus perhaps vpon diuers grounds and causes, both the Laity & Clergie deceiv'd themselves in thinking of the original of these Infeodations. But herein that which we have toucht before to be considered in Consecrations and Appropriations is also considerable, for what could such Infeodations by Lay men to Lay men, hurt the right of tithes which was in the Priesthood especially if due either *iure divino naturali*, or by any positive Law ancienter then the Infeodation. But we have not affirm'd, that no Infeodations came originally from the Church. Questionlesse some did; and beside the examples already noted, you may see that of *Rochemus* & who *Acleste de Hanchin* (in France, about the year M.CXXI.) *Dilectum laici v. supradicti* toucht; as *his* words are; and he gave the Church to an Abbey of S. Martini, and *minut. in presentiarum Monachis de mittenda concessit Decimas, & Decimas de Cultura Monachorum tu concessit habendam*

p. 120 Epist. 239.
editione secunda.
prima deest.

q. *Cont. Magde-*
burg. cap. 3.

v. *1. law. cap. 3.*

hincdem gene-
ris, sub Decim-
erum nomine,
proventus Domi-
nii solvantur in
Gallijs, in Germa-
nia, alibi vilesis
Erron, d' Argen-
tra, Conf. Brit. an.
1664, pag. 1109. &
Special Exem. lib. 2.
cap. 3. § 2. 64.

q. 1. 1. 1. 1. 1.
q. 1. 1. 1. 1. 1.
q. 1. 1. 1. 1. 1.

den post sui decessum. here it seems he had inheritance in the Tithes. For that other consuetude; that they came first first Impositions made by Princes, I doubt it hath no kind of probability. Indeed it appears that anciently in Turingia, the people were driven before their Christianity to pay Tithes to the Kings of Hungrie, both of their annuall increase, and of their children also; and in the government of the King that was declared by *Samuel*: it is said, *He will take the tenth of your Vineyards and give it to his chief Servants, and to his Officers.* But where shall you find the least mention of Infeodations made of such kind of Tenth? or any touch of them in the complaints of the Clergie against Infeodations? and withall, nothing hath beene of lesse practice then giving away in perpetuall right any such revenue due to any Crowne or State, only by speciall right of Suptem^l Malesse. But admit, these had their originall this way or any other as you will; whatless they can be proud to have been made of the verie selfe same Tithes which is due to the ministering Priesthood (which can never beene downe; seeing only where the infeodated Tithes was at first receivd and possessed by the Church by force of the Law of Tithing, not by arbitrary Consecration; in which case also it is considerable whether a Lay man could be at all capable of the fructus only of them, if due by an immediate expresse Law of God.) I see not how they could more prevent Parochiall payment to the ministering Priest; then the payment of rents in *Terragies*, or quantities in Corn, under the name of tithes to landlards should diminish the right of the spiritual Tithes, which way had either such a gift as was *Pharabi*, or the tenth spoken of by *Samuel*, to be taken by the King, touched the Tithes due by a superior or former law, to the Leuitical Priesthood: both might well have stood together, might not so, nay, should not so Tithes remain payable first the possessors of the nine parts to the Evangelical Priesthood, notwithstanding Infeodations or any reservations whatsoever, if they be due by a superior or former Law, especially if due by the Morall Law? and that Law should bee wringed rather against the Tenants of the Land then against the Pernors of the feudall Tithes. And that common distinction of the Canonists, of *ius percipiendi*, & *fructus Decimarum* here, is a mere shift, and nothing satisfies, ynlasse they could also teach vs how the *fructus* were the verie selfe same alwaies in Infeodations, and that they were deriued from a *ius percipiendi* in some Clergie man. Perhaps too much of these things; which are litle or nothing applicable to England, where we have scarce any example of a Tithes; that was in its nature feudall, other then in such as were taken from Monasteries by the Statutes of Dissolution, and may still be calld, as originally, by the name of Consecrated or Appropriated Tithes, although now Infeodated. But theretofore the

To the 5. §. that speaks of Exemptions, for matter of story may be added

added that of the *Hospitality*. After their exemptions given them with the two other Orders, about the year 1462, X. in the Eastern part they *ten Decretis*: *Patriarche* *quoniam* *ecclesiasticis* *Prohibitis* *multis* *legibus* *super* *Parochialibus* *et* *manibus* *in* *Detractionem* *et* *periculum* *in* *ferre* *voluerunt*, &c. and so could such as were excommunicat for non-payment of them *De prebendis* *autem* *sancti* *&* *universi* *redditiones* *que* *congrue* *ad* *eorum* *deserventiam* *decimas* *debent* *solvi*. Where by the way note that in this Eastern Church (which, after *Nicomedia* was recovered, and made a Kingdome like to Western Princes, should have been fashioned according to the Canons of the Western Church) Tithes were now appointed payable, although no authentic Law of that old Eastern Church, ever mentions them. But both in this and other things, the people of that Church were still (notwithstanding the new Kingdome of *Nicomedia* possessed by Europeans, and the Popes authority extended to them) most obstinate & refractory against the policies and Institutions offered them either in command or example from the West.

After the Opinions of the age in the 6. 5. the Laws both Imperiall, Provinciall, and Particular follow in the 7. upon which let it be considered, whether a consecration of Tithes were so made by the power and law of the Church and Common wealth or both (in several Territories, according to the Laws extended) that no profanation or detaining them or any part of them, might afterwards be lawfull and the like should be carefully thought on in the 1. 5. of the VII. Chapter, and in the VIII. Chapter which both the Laws of England, for the same purpose. The force of the words of all these Laws; the Authorities that made them; and the Territories to which they were extended, are especially to be observed by every one that here looks after humane positive Law. For many talk and write of that, and tell us here of *ius Ecclesiasticum* (at least if they fail in their Arguments from *Ius divinum*) but whence that *Ius Ecclesiasticum* is, and where or when made, they little enough know. For what hath a Provinciall Council of one Nation to doe with another? What hath the Imperiall of the old Roman Empire to doe with England? Nay, what hath the Popes Decrees to do here? But because there was a time when their authority was more largely acknowledged, their Decrees that bred much of what now justly continues in some States (which also justly now denie their authority) remains most observable, and wee have given them in their places.

Of the VII. Chapter.

IN the last CCCC. years, beside the establishment of *Parochiall* right in Tithes, and the various Opinions touching the immediat Law whereby they are due; the Practices of most Christian Nations, as it might be had out of their Laws and Lawyers, is faithfully related.

11. Titulus
de prebendis
cap. 1.

11. Quod constat
ex Martinus
Tus. li. Secret. Fi-
delium lib. 1. pars. 3.
c. 11. 1. 2. 3. 4.
inquit de rebus
Terra Sancta
11. 11.

in euery where almost to be met withal in England, that you shall haue it affirmed for cleer that *all other States are governed only by the Ciuil Law*. Indeed, if they which say so, vnderstood *Ciuil* for that which is the *Ius Ciuile* of euery singular State, it were but the same to talk of *Ciuil* and *Common Law*. For the *Common Law* of England also is the *Ius Ciuile Anglorum*. But it is euen with one mouth pretended vnsally, that the *Body of the Imperials*, read and profest in the Vniuersities, is the *Ciuil Law*, that governe (as they say) all other States. But this, howsoeuer received through lazie Ignorance, is so farre from Truth, that indeed no Nation in the world is governed by them. For whensoever they are supposed to governe (let the briefe clearing of so common an error, get pardon for the digression) it must be taken, that they either gouerne by their *owne originall auctoritie*, as they are *Imperials*, or from their *being received for Law into other States*, which are not in that first way subiect to them. According to that first way, only the *Empire* and perhaps a good part of *Italie*, should be ruled by them. But it is plaine, that for the most part, the disposition of Inheritances, punishing of Crimes, course of Proceedings, Dowers, Testaments, and such other, which are of greatest moment vnder the Legall rule, are euen in those States, where, by reason of their first Institution, they retaine a kind of auctoritie, ordered by most various Customes and new Statutes of seuerall Prouinces and Cities, so differing from those old *Imperials*; that the whole face and course of them is exceedingly changed in practice. This is plaine to euery one, that observes but the diuers Customes and Ordinances of the States subiect to the *Empire*; the *Ius Canonicum* collected by *Petrus Demasius*; the *Nemesio Karulina*, as it is set forth by *Georgius Rostus*; and the many published Decisions or Reports both of the *Imperiall Chamber*, and the *Rota* of *Rome*, *Naples*, *Pismon*, *Mantua*, *Grise*, *Atlogus*, and other parts of the Territories of *Italie*. You shall find those Decisions, in matters of greatest moment, most commonly grounded on Customarie Law, or later Constitutions. So, that to affirme, that in these places the old *Imperials*, or that *Ciuil Law* (as they call it) governe, is as if (for example) an equall ignorance should tel vs, that *Spain* was governed only by *Affric's* *Partidas*, and *Scotland* only by *Malcolms* Laws or the *Quene's* *Attachments*; or that in the time of the old Emperors the *Roman* *Senat* had been alwaies governed only by the *Will Tables*, or that *England* were legally ruled only by the *Grand Charter*, or by the two volumes of old Statutes. Like accession and alteration as any of these haue had, is found in the *Empire* and in *Italie*, where the *Imperials* haue, through the power of the Emperors and Popes, any new continuing auctoritie. Now, for other Christian States, which acknowledge no superior, or any subiection to the *Empire* (except *Portugall*, where the *Roman Ciuil Law* is authorized, by an Ordinance of State, in cases which

which are not intrally comprehended in the Customs or Constitutions of the Kingdoms as France, Spain, Scotland, Denmark, Poland, the Chie of Venice, and other also in Germany both made it selfe free from the Empire; what colour is there, that the Imperiall Ciuill Law should governe in them. Indeed in all of them, I thinke, the reason of it brought into method, is vsed and applied commonly to argument, when any of their Customs or Statutes (which are especially in France and Spaine very voluminous) come in question, because the Practicers studied in the Vniuersities, & had thence their Degrees given them; which yet they had not, till about some CCCC. years since, neither before about that time was a Doctor or Professor of them known on this side the Alps. But as it is Law, it neither binds nor rules with them, no more then the old stories of Herodotus, Thucydides, Diodore, Polybius, Isotylus, Liuius, Tacitus, and the like, or Cicero and Demosthenes, or Plato's Lawes, and other of that kind; which are equally sometimes vsed for reason or example, specially by the Practicers of France. And so the old Imperiall Ciuill Law *valde preuention* (as Bernard d'Argente, President of the Parliament of Rennes^a sayes) *non preiudicatur*; & *preuention* only *quantum Reges, Dynastie, & Republice intra potestatem suam valere patuerunt* And in France and Spaine, Lawes were some CCC. years since expressly made, that the Imperiall should haue no force in the. And in Scotland it is ordaind, that no Law haue force there, but the Kings Law^a and Statutes of the Realme, and that it should be governed by the *commun^a Lawes of the Realme*, and by none other Lawes. Doubtlesse, Customs haue made some parts of the Imperiall to be receiued for Law in all places where they haue been studied; as euen in England also, in Marine causes, and matter of personall Legacies. But in England therefore governed by them? It were as good^a & consequent to conclude so, as to affirme, that any of the other States were, because some petty things are ordered according to some Imperiall Text receiued and established by Custom. But this may seeme no fit place to speak more (perhaps not so much) to cleare this grosse error of such as yet pretend to know more then vulgarly, but can make no difference twixt the vse of Law in Studie or argument (which might equally happen to the Law of Utiopia) and the governing outwheele of them. If any desire to search further here, beside the Authorit^a cited in the^a Margine, let him especially see I. Baptista^a *Philoboschii Authenticis iurisregni Hispaniarum ac Siciliae*, & more especially *la Conferance du droit Francoise avec le droit Romano*, composed by Bernard Anthon, and obserue both the Volumes of Statutes and Ordinaunces of Spaine, France, Scotland, Poland, and of other Countreies, together with the various Provinciall Customs, especially in France, with the Arrests, Decisions and *Placards* of that Kingdome, and he shall soon be confirmed in that which a great Ciuillian of Italy is ingenious enough to tell vs; *Nipzini, Anglia, Sc-*

a *Ad Custom.*
Brit. tit. 21. de
Suspensionibus, ad
reuerentiam.

b *Vide Clappia.*
de Domains Or.
tit. 2. art. 15. §. 5.
Tit. de Repub.
lib. 1. cap. 8. §. 1.
vbi supra Or.
Pidip. 2. in prog.
matica ante c. 12.
Leyon Rois.

c *Parl. 3. lauch 1.*
cap. 48.

d *Parl. 6. lauch 4.*
cap. 79.

e *Vide sup. tit.*
de Primis. c. 12.
super f. 12. &
alid. Distinct. 1.
And. Auz.
de Rure. tit. 10.
Clappia. de Do
maine. lib. 2. tit.
15. §. 5. Tit. de
Repub. lib. 1. cap. 8.
& ante alios Im-
per. de Legibus. tit. 2.
lib. 3. cap. 8. & de
ordinam. prefat. ad
Statut. Polonic.
Prileg.

His, Italia, Hibernia, Aemania, Dacia, Sarmia, Pannonia, Bulgaria &c. non videntur legibus suis legi civilibus, sed legibus communibus. That is, they are all governed by their own common Laws. But what most learned Prier & Baron of Hainaut, Omerigonius habet sua legibus legibus repensit ut leges Anglie & Francie, &c. si in Italia in antiquis per Constitutiones quas habent sicut in Italia per leges. This was then, and is now true. And the Interpretation of those common Laws in most places, save England and Ireland, hath of late time been much directed by the reason of the Imperial's, and only by the reason of them (not by their auctoritie) and that also in case when they are not opposite at all to the common Laws, but seeme to agree with the Law of Nations or *communis leges*. And this use of them, at the furthest, began in its yongest infancy, not C. D. LX. yeeres since. For before that, even from Justinian's time, they lay wholly out of use: saving only, that some pieces of them, with the Interpolations of *Amaris* and his Chancellor *Anas*, together with *Lombard's* Additions and Interpretations, had their power in some parts of Italia and the Empire. But for about D. C. yeeres together, that is, from Justinian's till *Fredricus Barbarossa*, no Profession was of them in any Univerſitie, no Doctorship, no other Degree taken in them. But after that time, they grew into a common Profession in this Western world (although by their own auctoritie they are confined to Rome, Constantinople, and Syria) and even here in England were, about Henry the third's time, often applied to the common Law in discourse and argument, as you may see in *Bracton's* his frequent quotations of them. And heretofore some texts of them have been in our Court cited: not only as at this day sometimes is done (when the words only of some of the *regula juris* is brought into an argument) but the Title and Law, after the Civilian fashion, hath been remembered at the Barre, and so afterward express in the Report, as I have seen in an example or two in the *Maxims* years of Edward the 1st second. Yet, notwithstanding that, it is cleere, that England was never governed by the Civil (or Imperiall) Law, as it was also affirmed by the upper House of Parliament in 11 Richard. where the King and Lords protested also, that their meaning was, it never should be governed by it.

OF the VIII. Chapter.

Of this fullness of Laws that were made for Tithes in England, let it be considered (by such as enquire here we live) what interest was of right settled in the Clergie by them (howsoever they were little obeyed) And by what *Antiquities* made (we have carefully added still what might help to a judgement in that also) and how excessive, in regard of *Persons* and *Territorie*, they were, and some such other; and how farre the Tithes might be, after such Laws, *diminished* or *made*

or French. The Saxon is interpreted by the old Latin. But the Latin and French are left only in their own words. I presume, scarce any man, that with the least care studies the subject, will confess he understands not the content of such Latin. And the French I translated not, specially because it is but the same which is in our old year Bookes, and Secures; and may indeed even as soon be understood by any fit Reader of the rest, as I could have translated it. and I thinke the judicious Searcher desires rather the originall tongue, whatever it be, then a translation. Therefore I suppose (if he have not studied the Law, or otherwise know it) he will rather take some minuts paine than blame me for not turning it: and howsoever so divers people Ignorant, out of their dilligent stomachs, and a pretence of nothing but the more polished literature, it may here seem barbarous and distastfull; the truth is, it was the plain and genuine French of older times spoken in the English Court, and now loathed only by such a kind of men as all have to judge of it, nor understand the originall where it came to be and remain so with us. I remember that old Father Gregorie of Newcastle (whom they call *Philomachus*) speaking of the old Imperials of Rome, as they were in their Latin (which hath than was, and now is, most accurate and polite phrase) commends them for that they were indeed in an admirable and fluently language; and in such a one instructed an Imperiall grammar; beyond all that hath been, yet to me it seemed and much more, and so he saies he was much more to think of it, yet in his youth he was made to study them as *barbarous*, and was taught also to that purpose. If so great a man that curious language could secure no pleasure when he studied it, it is the less wonder that the Law French (which doth as truly and fully deliver the matter in our Lawes, as the Latin in the Imperials; though indeed faire from polite expression) should have so contemptible among the many people Ignorant which usually despise when ever their laziness of studies hath not furnished them withall, and most indifferently censure things only as they see them present, without regard to their cause or originall of them, which made them that they were fit to be vile and afterward remained; nor without exceeding dislike (if at all) tolerable. But thus by the way.

f In Pausanias
of Olympia.

Of the IX. X. XI. XII. XIII. and

XIV. Chapters.

Vpon the discovery of the Originall of our Purges; of the ancient and late Manners of Tithing, of the Manners of Consecration of Tithes made by the Laity; of the first setting of Churchwardens Tithes in England; of the Manners of Exemption; of the Manners, and the Manners of Tithes (all which are in the VI. Chapter) no fit Reader can be so blind as not to see the necessity

and

and new assertions and consequents to be made out of them in every inquirie that tends to a full knowledge of the true and originall nature of Tithes, as they are possessed or detained by either Lay or Clergie man, in respect only of any humane positive Law or civil Title. But we should here briefly admonish somewhat of our *appropriated or consecrated Tithes*, and conclude all with a touch of the *Canon Lawes ancient avaritie*, which in practice made such alteration in England, as is shewed, about the yeer M.C.C.

To the matter of *Consecration and Appropriation* here, apply what is admonished touching them in the *Exordium* of the VI. Chapter. and let every man first carefully look that he know the course of old *Appropriations*, and the way how the *Monasteries and colleges* came by them, before hee conclude rashly of the Tithes that are possessed throughout them. Tithes *consecrated and appropriated* were purposely dedicated to the Almighty and his Scrutes, although not without mixture of superstition, that we are sure of. But although a Tithes generally were due to the Evangelicall Priest: *scilicet* *divine* (without any civil Title) yet we are nothing sure that all or the most *appropriated or consecrated Tithes* are the *same* *same* Tithes so due, which yet is supposed as such, and seems further thought on by such as have troubled themselves and their Readers with arguments for the Church, in the point of *Appropriation*. Let him that shall now write of them, see here the way how to consider them. And let him that detaines them (and beleeveth them *not* *divine*) think of the ancient dedications of them made to holy vses, and however they were abused to superstition, as the other large endowments of the Church, before the Reformation, yet followed it not, without further consideration, that therefore, although so dedicated, they might be prophane to common vses, and lay hands. Consider herein with Diligence. But I doubt not but that every good man will be at it at our dissolution of Monasteries both the *Landed and Appropriated Tithes and Churches* possessed by them (that is, things sacred to the Service of God, although abused by such as had them) had been bestowed either for the advancement of the Church in a better maintenance of the labouring and defending Ministerie, to the fostering of good Arts, relieve of the Poore, and other such good vses as might remaine in them, for the benefit of the Church or Common-wealth, a Character of the wisdom of those who first with devotion dedicated them (as in some other Countries upon the Reformation was religiously done) then conferrd with such a prodigall dispersion, as it happened; on those who stood ready to *denounce what was sanctified*, and have (in no small number) since found such uncharitable usages derived to them; but as *St. Hieron* his Horse or the Gold of Tharsus. But I shall leave from scripture, and add here by the way, a complaint made in the *same* *same* not long after the Dissolution, touching the abuse that followed in the Church through Lay

8. *Chap. 10. The*
the same
in the
10. 10. 10. 10.

Robert
to wit!

men possessing of Appropriated Churches and Tithes. It deserves to be seriously thought on by every Lay man that now enjoy any of them, especially where Divine service is not carefully provided for. Ye that the Lords and Burgesses of Parliaments have (to use the words of it) I require of you in the Name of my poor Brethren that are English men and members of Christs bodie, that you consider well (as you will answer before the face of Almighty God in the day of judgement) this abuse and sin is amended. Wheras Anticrist of Rome don't openly without any ruse walk up and down throug out England, he had so great favour, and his children had such craftie wits (for the children of this world are wiser in their generation than the children of light) that they had not only almost gotten all the best lands of England into their hands, but also the most part of all the best Benefices both of Parsonages and Vicarages, which were for the most part all impropred to them (the Improprations held by them were much more then one third of all the Parish Churches in England divided into three parts) And when they had the gifts of any not impropred, they gave them unto their friends, of the which almost some were laymen, for the Monks found of their friends children at schools. And though they were not learned, yet they kept hospitallie, and helped their poor friends. And if the Parsonage were impropred the Monks were bound to dole Almesse to the pore, and to keepe hospitallie, as the writings of the gifts of such Parsonages and Lands do plainly declare in these words, in purum elemosinam. And as touching the Almesse that they delt, and the Hospitallie that they kept, every man knoweth that many thousands were well relieved of them, and might have bene better, if they had not had so many grette men Horse to feed, and had not bene overburged with such idle Gentlemen, as were more out of the Abbacies. And if they had any Vicarage in their hands, they set in sometimes some sufficient Vicar (though it were but seldom) to Preach and to Teach. Not that all the Abbacies with their lands, goods, and impropred Parsonages, be as Temporall mens hands; I do not here tell that our halowen worth of Almesse or any other profit cometh unto the people of these Parishes. Your picture of putting downe Abbeyes, was to amend that was amiss in them. It was some amiss, that a great part of the lands of the Abbeyes (which were given to bring up learned men that might be Preachers, to keepe hospitallie, and to give Almesse to the pore) should be spent upon a few superstitious Monks, which gave not XL. pound in Almesse, when they should have given CCC. It was amiss, that the Monks should have Parsonages in their hands, and delt Almesse, that the XX. part thereof to the Pore, and printed but one line yet to them that paid the Tithes of the Parsonages: It was amiss, that they scarcely among XX. set not one sufficient Vicar to preach, for the Tithes that they received. But for now here is that was amiss amended, for all the grette pretence. It is amended even as the Devil amended his Devils legge (as it is in the Prayerbooke) when he should have set it right, he made it quite in pieces. The Monks gave no little Almesse, and for unable persons many

* Fullbello dicit.
The complaint of
Roderik More
summarise a Grey
Friar the olim
impet. Canon.

...the ...
...the ...
...the ...

* false.

6. His admittall
to the benefice
is not made
into a benefice
but into a benefice
of the benefice.

time in their benefices. But now, where XX. pound was given yearly to the Poor, in more than in C. places in England is not one meales meat given. This is a ⁹ severe amendment: where they had almes one or other Vicar, that either provided, or byred some to preach, now is there no Vicar at all; but the Farmer is Vicar and Parson altogether; and only an old deaf-may Monk or Friar, which can scarcely say but Matins, is byred for XX. or XXX. shillings, meat and drink, yea in some places for meat and drink alone, without any wages. I know, and not I alone, but XX. M. men, know more than D. Vicarages and Parsonages thus well and Gospelly served, after the new Gospel of England. And so the Autor goes on with sharp Admonitions to the Lay men, that fed themselves fat with the Tithes of such Churches, while the soules of the Parishioners suffered great famine for want of a fit Pastor; that is, for want of fit maintenance for him, for without that, he is scarce to be hoped for.

But we conclude with that of the Canon Law getting such force, and making such alteration in matter of Tithes about the year M.C.C. when through it, *Parochiall payment* became first to be performed here, or elsewhere, generally, and as of common right (where other titles prevented it not) and through it only; not through the ancienter secular Lawes made here for Tithes. For the suits for them in the Spirituall Courts either were all grounded vpon the Canons; or the common right of Tithes was now supposed in the Libell as a knowne due to the Clergie, without secular Law. It may soon be apprehended, that it was much lesse difficult about that time, then any other, for the Popes and their Canon Law to gaine more obedience among subiects, and execute more autorsitie over Lay possessions, when also they so easily vsurpt power over supreme Princes, which yielded to them. For no time ever was, wherein any of them more insolently bare themselves in the Empire, never more so insolently in England, as in the continuing times next before and next about this change. And to all States the Church of Rome now grew most formidable. Remember but the Excommunication and Correction suffered by *Fredrick Barbaross*, *Henry the first*, and other Princes of the Empire, and by our *Henry the second*, and *King John*. the Stories of them are obuious. And our *Richard the first*, betweene these two, to gratifie the Clergie here for their exceeding liberalitie, in contribution to his Ransom from Captiuitie, with great fauour gave them an indulgent Charter of their liberties; which being ioin'd with those other prone and yielding Admissions of the Ecclesiastique Government ouer the Crowne (to w^{ch} the times) doubtlesse gave no small authority to the Barres of the Canon Law in those things, which before about that time were diuersly otherwise. Neither was that part of the Canon Law, which would haue a General and Parochiall payment of Tithes, not only bound to any, in regard of the Clergie's profit; but also none other, doubtlesse, was so great as it, in gaining the Clergie a direct

h. Apud Iuvenc.
3. p. 11. D. 1. 1.
lib. 1. p. 11.
edit. 1601.

Direct and certain Revenue. Therefore it was not without reason on their side, at such time as they saw the Power of Rome, that is, the authority of Decretals and of the Canons grew so dreadfull to Princes and Subjects, that they should urge this on to a condemning practice, and that with execution of the reigning Censures of the Church. Hence have the Canons, in this point, hitherto here continued, and have been and are binding Ecclesiastique Lawes, seeing wherein the later expresse Law of the Kingdome crosses them. And thus out of the quality of the time, with regard to the practised insolencie of the Pope and his Clergie, in putting their Canons and Decretals in execution, that received generall practice of Parochiall payment (nearly most according to the Canons) and other such alterations, that suddenly varied from former use, and from the libertie of the Lay Subject, must have its originall; not from any want of the Canons of the Church of Rome, as if they had not been here at all had or used, before about that time. For doublesse, the Canon Lawes were here used and practised as farre forth as the Clergie could make the Laitie subject to them. For, about D. yeers before this alteration, good testimonie is of the publique and solemne receiving of the *Codex Canonum vetus Ecclesie Romanae* (mentioned by old Popes) for the eldest and most authentique Bodie of the Canon Law of the Western Church) and that in a Nationall Synod held in D. C. LXX. vnder Theodre and Wilfrid Archbishops, where, with one voice, the Clergie answered Theodre, *Optime & omnibus placet quocunque definiuerunt Sanctorum Canonum patrum nos quoque omnes alacri animo libentissimi seruare. quibus statim* (sayes Theodre) *presentibus librum Canonum &c.* But at that time there was no Law for Taxes, or mention of them in the known Canon Law of the Church of Rome, or in any other Prouinciall Canons, saying in that of the second Synod of Maastricht. Afterward also we find that *Leges Episcopales*, which were serued by *W. Iam* the first from the *Hundred*, and continued to the *Bishops Consistorie*, that wee may omit the Nationall or Prouinciall Constitutions of that Kingdome, made in those elder times, according to the old Canons of the Church of Rome. And X. yeers before Gratians Decree written, it is certaine, that the Canons of the Church, generally by the name of *Canones* and *Canonum Decreta* (for diuers collections were of them, in some also confirmed by Papall authority, beside the *Codex Vaticanus*, before that of Gratian) were familiarly talke of and vied in that great Controuersie in the Synod of Winchester, in the fourth yeere of King Stephen, touching the Castles of Newark, Salisbury, and the *Wier*, where the King denied utterly, *Canonum* *potestas*, that is, to haue it determined by them, whether, or no, the two Bishops, Roger of Salisbury, and Alexander of Eborac, might lawfull keepe their Castles that they had fortified. But while the rest of the Bishops stood so much vpon their

1. D. 1. 1. 1. 1. 1.
2. D. 1. 1. 1. 1. 1.
3. D. 1. 1. 1. 1. 1.
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5. D. 1. 1. 1. 1. 1.

1 D. 1. 1. 1. 1. 1.
Romanorum. Dist.
10. 1. 1. 1. 1.

k. B. 1. 1. 1. 1. 1.
lib. 1. 1. 1. 1. 1.

1. D. 1. 1. 1. 1. 1.

m. G. Malmesb.
1. 1. 1. 1. 1.
pag. 103. b.

1. D. 1. 1. 1. 1. 1.
1. D. 1. 1. 1. 1. 1.

In *Law, Angl lib. 2.*
 §. 43. vide, si pla-
 cet, *Nov. ad For-*
ense. pag. 41. & 44.
 o *De ungu. cura-*
ham, lib. 5. cap. 32.

Canons, and even in the face of Maieſtie profeſt a rebellion, the King and the Lay ſubjects, it ſeems, grew ſo exaſperated againſt them, that by publique command, for preſervation of the liberties of the Crown and Laiſie, they were forbidden to be of any more uſe in the Kingdom. For ſo perhaps it is to be underſtood (as we have elſewhere noted) in *John of Chantres*, where he ſayes, that *Tempore Regis Stephani à regno iuſſu ſunt Leges Romanae quas in Britanniam domus Venerabilis Patris Theobaldi Britanniarum Primatis aſcinerat. Ne quis etiam libros retineret, editio Regis prohibitum eſt.* What he calls *Leges Romanae*, the moſt learned Frier Baron mentioning the ſame ſtorie, ſaies *Leges Italiae*, and takes them for the *Roman Imperialls*, and not for the *Canon Law*. I confeſſe, I ſee not enough clearly here to judge (vpon the words of *John of Chantres*) whether it were the *Canons* or the *Imperialls*, on the one ſide, If we ſay he meant that *Theobald* or his Clergie brought the *Roman Canon Law*; it might ſo ſeem as if it had not been here before in the hands of the Clergie, nor partly practiced by them. Which doubtleſſe is otherwiſe. If on the other ſide we underſtand the *Imperialls* (Copies of which indeed might well be at that very time brought as a noveltie hither; for they were then newly found; and plainly in *Henrie the ſecond* time, they were here in the hands of the more curious Scholars, as you may ſee by *John of Chantres* his citing of them) how then is that true which he preſently after ſaies of the encreaſing power and force of thoſe *Leges Romanae*? *Sed*, ſaith he, *Deo faciente et magis virtus legis inualuit quo eam amplius nitobatur impietas infirmare.* What force or power at all had the *Imperiall* here afterward? where is any ſigne of it? But the objection againſt that which might proue them not to have been the *Canon Laws*, may not difficultly perhaps be answered. It is true that the *Canons of Rome* were here before, and read, and partly practiced in the Church. But diuers Collections were of them about this age of King *Stephen*, and perhaps ſome later and larger Collection might be brought hither by Archbiſhop *Theobald*, or ſome of his Clergie, which are underſtood, I think, in that *Domus Venerabilis Patris Theobaldi*. He himſelfe perhaps might bring *Leo's Decree* (when he came from *Rome* in 3. of King *Stephen*) and endeavour the ſtrict practice of it here; which the King and the Lay ſubjects had reaſon enough to diſlike) or ſome of his Clergie might perhaps afterward bring in *Gratian's Decree*, that was both compiled by *Gratian* and confirmed by Pope *Eugenius* the third, about ten yeers before *Theobald's* death, that is, about 16. of King *Stephen*. And this way thoſe words of *Legis virtus inualuit*, may have their truth. For however that oppoſition againſt the *Canon Law* were, it is moſt certain that this firſt part of the body of it (the *Decree*) was preſently vpon the firſt publication of it in uſe in *England*, and familiarly cited by ſuch Diuines as talkt of what had reference to it, witneſſe eſpecially *Giraldus Cambrenſis* in his *Epistles*, and the practice of the *Canon Law* here for the time

In *Epistles, lib. 2.*
 lib. 2. Bibl. Cot.

time of *Henry the second*, is seen in the Epistles of that *Yale of Char-
ter*; which yet remain and are, I think, the ancientest examples of
proceedings in our spiritual Courts. But notwithstanding that first
part of the body of the *Canon Law*, which expressly commanded Tithes
to be generally paid, were here soon received among the Clergie; yet
about L. years after that, the former course of *Arbitraria Consecration*
of them continued; and both that and the rest of those courses in
disposition of Church-revenues which so differ from the *Canons*,
and from the practice of this day, was not fully altered till some *Decre-
talls* came hither with more powerfull and dreadfull autoritie (as the
times were) of some of the following Popes, especially of *Alexander
the third*, and *Innocent the third*, which two alone, I think, sent as ma-
ny commanding *Decretalls* into every Province as all their Predecess-
ors had before done; and especially into *England*, as is already
shewd, they sent divers (only for the matter of Tithes) which were all
first of *Papall* autoritie for the particular ends for which they were
sent, and so were obeid as *Canon Law*, although none of them became
parts of the *generall Canon Law* vntill *Gregorie the ninth* put some of
them into his *Decretalls* autorised by him in the year M. CC. XXX.
about which time perhaps and divers years before, the *Canon Law* of
Rome was not only read here privately among the Clergie, but profes-
sed also in Schooles appropriated to it. so I ghesse is that close Writ of
19. Hen. 3. to be understood, which prohibited the holding of *Schola
Legum* in *London*. It was directed to the Mayor & Sherrifs commanding
them, *¶ Quod per totam Civitatem Londoniensem factum est & fieri
prohiberi ne aliquis Scholam regens de Legibus in eadem Civitate de cetero ibi-
dem Leges doceat. Et si aliquis ibidem fuerit huiusmodi Scholam regens ipsum
sine dilatione cessare faciat.* T. Reg. apud *Basin.* XL. die Decembris. This
was five years after the *Decretalls* published, and it seems most pro-
bable, that these *Leges* were *Canon Laws*; perhaps more (as usually they
were) in the profession also with the *Imperial* (for both of them were,
it seems, studied here vnder *Henry the third* by the Clergie, more
then any other part of learning) and therefore were forbidden as
being both, in regard of their own autoritie, against the supreme
Majestie and independence of the Crown of *England*.

q. *Class. 19. Hen. 3.*
numbr. 22.

r. *videlicet 19. Hen. 3.*
apud *Mant. Pa-*
ris *hij. martii a. d.*
1155.

The end of the Review.

The ancient Records and other Manuscripts.

Used in this Historic of Tithes, with references to the places where they are cited, and to the Offices and Libraries wherein they remain. they are specially therefore here collected that the more learned Reader (being perhaps, out of his owne Studies, furnished with the most or all of what we haue out of printed Testimonies) may at one view, without pains of reading the whole, be directed to all of them. I presume he might wish for such a collection; which was neither difficult for me to make; nor will it be hard for any man that hereafter transcribes or Prints it, to alter the numbers of the Pages according to his transcribed or printed Copie. the Margine will easily help him.

Records in the Tower of London.

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ANGLORVM

Facies altera.

*Memoria nempe à primula
HENRICI II. ad usq. abitionem
quod occurrit Prophanum Anglo-
Britannia Ius respiciens succincto
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Inlastris. Comiti Sarisburia
DEST. D. D.

Operâ Iamnis SELDEN Saluintonij
e Societate Inter. Templ. Londinensis.

E quibus



Ma Larem.



hac Populum

spectat : ac

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